No. 84-312

In the Supreme Court of the United States

OCTOBER TERM, 1984

DONALD J. DEVINE, DIRECTOR,
OFFICE OF PERSONNEL MANAGEMENT, PETITIONER

v.

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND,
INC., ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED
AUGUST 28, 1984
CERTIORARI GRANTED OCTOBER 29, 1984

443pp

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RELEVANT DOCKET ENTRIES

DOCKET NO. 83-0928

JOYCE HENS GREEN, J.

TITLE: NAACP LEGAL DEF. & ED. FUND, ETL V DEVINE

CAUSE: 5 USC 702; REVIEW OF AGENCY ACTION

1 PLA
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

2 PLA
PUERTO RICAN LEGAL DEFENSE AND EDUC. FUND, INC.

3 PLA
FEDERALLY EMPLOYED WOMEN LEGAL AND EDUC. FUND, INC.

4 PLA
INDIAN LAW RESOURCE CENTER

5 PLA
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

6 PLA
SIERRA CLUB LEGAL DEFENSE FUND, INC.

7 PLA
NATURAL RESOURCES DEFENSE COUNCIL, INC.

8 DFT
DONALD J. DEVINE HON.
DIRECTOR, U.S. O.P.M

DATE	NR.	PROCEEDINGS
1983		
Mar 30	1	COMPLAINT, appearance; Exhibits; affidavits.
Mar 30	2	MOTION of pltffs. for preliminary injunction; memorandum.
Mar 30	3	MOTION of pltffs. for summary judgment; statement of facts; P&A's.
Mar 30		SUMMONS (3) issued.
Mar 31	4	ORDER directing that within 7 days, counsel for pltfs. shall report to the Court whether this case, in their view, is related to CA 80-1888 NAACP Legal Defense Fund vs. Campbell, CA 80-2070 Puerto Rico Legal Defense and Education Fund vs. Campbell, CA 81-2999 NAACP Legal Defense Fund vs. Devine, or any other action that has been before this or any other US Dist. Court, within the meaning of Rule 3-4 of the Rules of the USDC for D.C. (N) GREEN, JOYCE J.
Apr 6	5	AFFIDAVIT of Service upon Donald J. Devine on March 30, 1983 and upon the U.S. Atty. on March 31, 1983.
Apr 6	6	REPORT by Pltffs. to the Court on relationship of this matter to other cases before this Court; attachment.
Apr 8	7	MOTION by defts. to strike pltffs' motion for summary judgment and memo of P&A's in support thereof.

Apr 12	8	CONSENT MOTION by def for enlargement of time and Memo of P&A's to respond to pltf's. motion for preliminary injunction.
Apr 12	9	MOTION by deft. to dismiss; P&A's; Attachments A through D.
Apr 14	10	ORDER filed 4-13-83 granting motion of deft for extension of time to file opposition to pltfs' motion for a preliminary injunction on or before 4-12-83. (signed 4-12-83 (N) GREEN, JOYCE, J.
Apr 14	11	RESPONSE by Pltffs. to deft's. motion to strike.
Apr 19	12	AFFIDAVIT of Service by certified mail upon Atty. Gen. on 3-30-83; Attachment.
Apr 26	13	ORDER filed 4-22-83 deeming that pltfs' motion for summary judgment be filed as of 4-19-83, and that the time in which deft. has to respond thereto shall commence running on that date. JOYCE GREEN, J.
Apr 26	14	MEMORANDUM by Pltffs. in opposition to deft's. motion to dismiss; Affidavit of Emanuel Owens; Exhibits N through S.
May 2	15	MOTION by deft. for enlargement of time to respond to motion for summary judgment; P&A's.
May 10	16	ORDER filed 5-6-83 denying motion of deft to dismiss; denying motion of pltfs for a preliminary injunction; and granting motion of deft for enlargement of time within ten (10) days to respond to pltfs' motion for summary judgment. (N) (signed 5-5-83) JOYCE HENS GREEN, J.
May 16	17	MOTION by defts. for enlargement of time to respond to pltffs' motion for summary judgment; P&A's.

May 19	18	ORDER filed 5-18-83 granting motion of deft. for enlargement of time to and including 5-18-83 to respond to pltfs' motion for summary judgment. (N) (signed 5-17-83) JOYCE GREEN, J.
May 18	19	MOTION by deft. for enlargement of time to respond to pltffs' motion for summary judgment; P&A's.
May 20	20	STATEMENT by Pltffs. of points and authorities in opposition to deft's. motion for further enlargement of time to file response to pltff's. motion for summary judgment.
May 20	21	MOTION by deft. to exceed page limitation: EXHIBIT (Memo of P&A's in opposition to S/J)
May 24	22	ORDER filed May 23, 1983, granting motion of deft. to exceed page limitation. (N) JOYCE GREEN,
May 24	23	ORDER filed May 20, 1983, granting motion of deft. for enlargement of time to on or before 5-19-83 to respond to pltf's motion for summary judgment. (N) JOYCE GREEN, J.
May 24	24	MEMORANDUM by defts. of points and authorities in opposition to pltff's. motion for summary judgment; Statement of genuine issues; Attachment A.
May 26	25	ORDER filed May 25, 1983 granting nunc pro tunc, the motion of deft. for enlargement of time to file opposition to pltf's. motion for summary judgment and said opposition shall be accepted by the Clerk of the Court. (signed: 5-24-83) (N) JOYCE GREEN, J.
May 26	26	ERRATA by deft. to deft's. memo of P&A's in opposition to pltffs' motion for summary judgment; Attachment.

May 27	27	REPLY by Pltffs. in further support of pltffs' motion for summary judgment; Table of Contents; Table of Authorities; Affidavit of William L. Robinson; Affidavit of Sharon Miles and Affidavit of Anne F. Sweazey w/Attachments.
Jun 10	28	ORDER filed June 9, 1983 setting for oral argument on motion of pltf. for summary judgment on 6-23-83 at 10:00 A.M., each side will be allowed 45 minutes for argument. (signed: 6-8-83) (N) JOYCE GREEN, J.
Jun 23		STATUS CALL; parties to simultaneously file and hand deliver supplemental briefs as regulations received 6/23/83, by no later than 4:00 p.m. on 6/28/83, with any responses by no later than 4:00 p.m. on 6/30/83; resetting arguments on motion of pltf. for summary judgment for 7/6/83 at 1:30 p.m. (45 minutes per side) (Rep. D. MacQuown) JOYCE GREEN, J.
Jun 23	29	NOTICE of filing by deft.; attachment.
Jun 24	30	ANSWER by deft. to complaint.
Jun 24		CALENDARED CD/N
Jun 28	31	SUPPLEMENTAL MEMORANDUM by Pltffs. in support of their motion for summary judgment; Table of Contents; Appendix A & B.
Jun 28	32	SUPPLEMENTAL MEMORANDUM by deft. in opposition to pltffs' motion for summary judgment; Exhibit A & B.
Jun 30	33	REPLY by Pltffs. to deft's. supplemental memorandum; Appendix A & B.
Jun 30	34	REPLY by Deft. to pltffs' supplemental memorandum; Exhibit A & B.
Jul 6		MOTION by pltfs. for summary judgment argued and taken under advisement. (Rep: Doug MacQuown) JOYCE GREEN, J.
Jul 18	35	MEMORANDUM OPINION filed July 15, 1983. (N) JOYCE GREEN, J.

Jul 18 36 ORDER filed July 15, 1983, granting in part and denying in part, motion of pltfs. for summary judgment, as explained in the Memorandum Opinion; permanently enjoining deft. from excluding pltfs. from participation in the Combined Federal Campaign with respect to the solicitation of "Designated contributions"; dismissing without prejudice to the extent that pltfs' complaint concerns their right to receive "undesignated contributions" and denying request of pltfs. for preliminary injunction. (N) JOYCE GREEN, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-0928

JOYCE HENS GREEN, J.

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
10 COLUMBUS CIRCLE, SUITE 2030,
NEW YORK, N.Y. 10019
(212) 586-8397;
PUERTO RICAN LEGAL DEFENSE AND
EDUCATION FUND, INC.
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NEW YORK, N.Y. 10157
(212) 532-8479
FEDERALLY EMPLOYED WOMEN LEGAL AND
EDUCATION FUND, INC.
1426 H STREET, N.W., SUITE 800,
WASHINGTON, D.C. 20005
(202) 638-9579;
INDIAN LAW RESOURCE CENTER,
601 E STREET, S.E., WASHINGTON, D.C. 20003
(202) 547-2800;
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW,
733 15TH STREET, N.W., SUITE 520,
WASHINGTON, D.C. 20005
(202) 628-6700;
SIERRA CLUB LEGAL DEFENSE FUND, INC.,
1424 K STREET, N.W.,
WASHINGTON, D.C. 20005
(202) 347-1770; AND
NATURAL RESOURCES DEFENSE COUNCIL, INC.,
122 E. 42ND STREET, NEW YORK, N.Y. 10168
(212) 949-0049,
PLAINTIFFS,

v.

HON. DONALD J. DEVINE, DIRECTOR,
UNITED STATES OFFICE OF PERSONNEL MANAGEMENT,
1900 E STREET, N.W.,
WASHINGTON, D.C. 20415,
DEFENDANT.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I.
NATURE OF THE CASE

1. This is a complaint for declaratory and injunctive relief seeking to enforce the rights of the plaintiffs, corporations organized under the laws of New York or the District of Columbia and authorized to do business in the District of Columbia, under the First and Fifth Amendments to the Constitution of the United States.

II.
JURISDICTION

2. Jurisdiction is conferred pursuant to 28 U.S.C. §§ 1331, 1343, and 1361 and 5 U.S.C. § 702, the Administrative Procedure Act. This is an action seeking declaratory relief (28 U.S.C. §§ 2201 and 2202), and preliminary and permanent injunctions to enforce rights under the First and Fifth Amendments to the Constitution of the United States, to wit, the right of free speech, equal protection of the laws, and due process of law.

3. The amount in controversy exceeds $10,000 exclusive of interests and costs, since the case involves the right of plaintiffs to participate in the Combined Federal Campaign and to, thereby, receive a fair share of the receipts of the Campaign which are in excess of $100,000,000 per year.

III.
PARTIES

4. *Plaintiffs*

A. The NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC. (NAACP/LDF) is a body corporate organized under the laws of the State of New York and with the approval of the courts of that state. It is a legal aid society whose purpose is to render legal assistance gratuitously to black persons seeking the vindication of their civil rights and constitutional rights. It is approved by the United States Internal Revenue Service as a charitable, tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. Under New York law, it is authorized to conduct business in the District of Columbia.

B. The PUERTO RICAN LEGAL DEFENSE AND EDUCATION FUND, INC. (PRLDEF) is a not-for-profit corporation organized under the laws of the State of New York to provide free legal assistance to Puerto Rican and other Hispanics seeking to vindicate their civil and constitutional rights. It is approved by the United States Internal Revenue Service as a charitable, tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. Under New York law, it is authorized to sue and be sued under its corporate name.

C. FEDERALLY EMPLOYED WOMEN LEGAL AND EDUCATION FUND, INC. (FEWLEF) is a not-for-profit corporation organized under the laws of the District of Columbia to provide free legal assistance to federal employees seeking vindication of their right to be free of discrimination in employment and to provide education and training related to federal employment matters. It is approved by the United States Internal Revenue Service as a charitable, tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. Under the laws of the District of Columbia, FEWLEF is authorized to sue and be sued under its own name.

D. INDIAN LAW RESOURCE CENTER (ILRC) is a not-for-profit corporation organized under the laws of the District of Columbia to provide free legal assistance to Native Americans seeking to vindicate their constitutional and legal rights. It is approved by the United States Internal Revenue Service as a charitable, tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. It is authorized to sue and be sued under its corporate name.

E. THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW (the Lawyers' Committee) is a not-for-profit corporation organized under the laws of the District of Columbia to provide free legal assistance to minority and impoverished citizens to vindicate their civil and constitutional rights. It is approved by the United States Internal Revenue Service as a charitable, tax-exempt organization under Section 501(c)(3) of the Internal Revenue

Code. It is authorized to sue and be sued under its corporate name.

F. The SIERRA CLUB LEGAL DEFENSE FUND, INC. (Sierra Club LDF) is a not-for-profit corporation organized under the laws of California to support and enforce laws protecting the environment, primarily through legal actions brought on behalf of affected individuals and organizations. It is approved by the United States Internal Revenue Service as a charitable, tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. It is authorized to sue and be sued under its corporate name.

G. The NATURAL RESOURCES DEFENSE COUNCIL, INC. (NRDC) is a not-for-profit corporation organized under the laws of New York dedicated to the wise management of natural resources, enhancement of environmental quality, and reduction of health risks from pollution. It is approved by the United States Internal Revenue Service as a charitable, tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. Under New York law, it is authorized to sue and be sued under its corporate name.

5. *Defendant* Donald J. Devine is sued in his official capacity as Director, Office of Personnel Management, (hereinafter OPM) as agency of the United States. As Director of the OPM, he is charged with directing the Combined Federal Campaign (hereinafter CFC), the exclusive means by which private charitable organizations are able to solicit federal employees and military personnel at their places of work or assignment.

IV.
FACTS

6. The Combined Federal Campaign (CFC) was originally established as a result of Executive Order No. 10927 in 1961. Executive Order No. 10927 has been superceded by Executive Order 12353 as amended by Executive Order 12404, a copy of which is attached hereto. Under the Orders and implementing regulation (5 C.F.R. Part 950), all charitable solicitation of federal military and personnel at their places of work must be carried out under the auspices of the CFC.

7. Direction and control over the CFC was given first to the United States Civil Service Commission and then to the Office of Personnel Management, its successor agency. Final authority over which private charitable organizations would be allowed to participate in the CFC was given first to the Chairman of the Civil Service Commission and then to the Director of OPM, the defendant herein.

8. Under the CFC, funds donated by individual federal personnel are of two kinds, *designated* and *undesignated*. An individual may designate any organization approved for inclusion in the CFC to receive a specified contribution each pay period. The specified amount of money is automatically deducted from the individual's pay check and transmitted to the designated agency. If the individual does not designate a particular agency to receive his or her funds, the funds are put into a pool which is divided between the agencies accepted into the CFC. Only agencies whose applications are accepted for inclusion into the CFC can receive funds. Therefore, an agency that has been denied inclusion cannot solicit federal personnel at their places of work or assignment. Moreover, a federal worker, whether civilian or military, cannot give money to a charitable agency of his or her choosing through the check-off method if the agency has not been approved for inclusion in the CFC.

9. As noted above, each of the plaintiffs is a not-for-profit charitable organization approved by the Internal Revenue Service as a tax-exempt organization under Section 501(c)(3) Internal Revenue Code. Each of the plaintiffs has as a major part of its activities the conduct of litigation on behalf of minorities or other persons to carry out the laws and Constitution of the United States. As detailed in affidavits filed with this complaint the organizations bring actions in such areas affecting the public interest as equal employment opportunities, fair housing, voting rights, health care, education, the environment, the rights of native Americans, etc. In addition to these activities some of the plaintiffs have scholarship programs and conduct a variety of educational and community development activities related to their purposes.

10. The plaintiffs provide legal services at no cost to individuals, groups of individuals, and organizations seeking to vindicate their statutory, civil, and constitutional rights under the laws of the United States. In many instances clients are indigent or have incomes below the poverty line. Moreover, since most of the cases the plaintiffs handle are class actions or involve complex issues, the costs of the litigation are far beyond the means of their clients, even those with substantial incomes. The activities of organizations such as the plaintiffs have been held on a number of occasions to be protected by the First Amendment to the Constitution of the United States. *NAACP* v. *Button*, 371 U.S. 415 (1963); *In re Primus*, 436 U.S. 412 (1978).

11. As a direct result of the legal services plaintiffs provide, hundreds of thousands of persons receive tangible and intangible benefits. For example, class members in employment cases have received tens of millions of dollars in back pay, increased pension rights and have received incalculable direct future benefits, including increased salaries over the rest of their working lives. As a result of health care and prison litigation thousands of persons will have access to improved care in new and upgraded hospitals and other health facilities. Litigation brought in the area of education has brought improved education in the form of integrated and bilingual education and better programs for the under privileged. In the area of the rights of native Americans, improved health care, education, and the establishment of rights to land and housing has been accomplished.

V.
EXHAUSTION OF ADMINISTRATIVE REMEDIES

12. In 1980 two of the plaintiffs herein (NAACP/LDF and PRLDEF) were denied admission to the CFC. This denial was pursuant to the then existing "direct services rule." As a result of litigation, this Court held the direct services rule unconstitutionally vague and prohibited its future use. NAACP Legal Defense and Educational Fund, Inc., 504 F. Supp. 1365 (D.D.C. 1981). Following that decision OPM in 1981 approved for participation in the CFC all legal defense fund type organizations that applied, including a number of the plaintiffs.

13. In 1982 a new executive order was issued, E.O. 12353, as were implementing regulations found at 5 C.F.R. Part 950. The new regulations specifically permitted the inclusion of legal defense funds as participants in the Combined Federal Campaign. As a result the remaining plaintiffs were admitted to the CFC in 1982.

14. In the summer and fall of 1982 an alleged "controversy" over the inclusion of legal defense funds arose. As a direct result there was issued on February 10, 1983 Executive Order 12404. The announced purpose of the executive order was to permit the future exclusion of legal defense funds, including a number of the plaintiffs by name, in an attempt to satisfy the requirements established by the earlier decision of the court in *NAACP Legal Defense and Educational Fund, Inc.* v. *Campbell*, 504 F. Supp. 1365 (D.D.C. 1981).

15. Although defendant has announced his intentions of disapproving plaintiffs and other legal defense funds for future participation in the CFC new regulations have not as yet been issued. Based on past experience it is probable that decisions on the applications of plaintiffs for inclusion in the 1983 CFC will not be decided upon at the national OPM level until June. If plaintiffs are denied, by the time they receive an adjudication of the legality of that denial it will be too late to apply successfully to the hundreds of local CFC's in order to actually participate in the Combined Federal Campaign for 1983. Because of these circumstances, and because defendant has made clear his intention of disapproving the plaintiffs for continued participation in the Combined Federal Campaign further exhaustion of administrative remedies will be futile.

VI.
VIOLATION OF CONSTITUTIONAL RIGHTS

16. The rejection of plaintiffs' applications to participate in the Combined Federal Campaign will violate their rights under the First and Fifth Amendments. *First*, if the Executive Order in fact authorizes the rejection of plaintiffs' applications for the reasons given, then it violates the First Amendment on its face. *Second*, if it does not so authorize, then it is applied in violation of the First Amendment and is

applied arbitrarily and capriciously in violation of the guarantees of due process and equal protection embodied in the Fifth Amendment.

VII.
IRREPARABLE HARM

17. Plaintiffs will suffer irrevocably the loss of substantial donations from federal civilian and military personnel, thus hampering them in carrying out their First Amendment protected activities. There is no adequate remedy at law available to the plaintiffs.

VIII.
RELIEF

18. Wherefore, for the foregoing reasons plaintiffs pray:

1. That the court issue a declaratory judgment that the denial of plaintiffs' applications to participate in the Combined Federal Campaign violates their rights under the First and Fifth Amendments;

2. That the court issue a preliminary and permanent injunction enjoining defendant, his agents, employees, and successors in office, from failing to take all necessary steps to ensure the inclusion of plaintiffs as participating organizations in the Combined Federal Campaign;

3. That the court enjoin the defendant, his agents, employees, and successors in office, from excluding plaintiffs from the CFC in the future on grounds that violate the First and Fifth Amendments;

4. That plaintiffs receive their costs and attorneys' fees in this matter; and

5. That the court grant such other and future relief as may be just and equitable.

Respectfully submitted,

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JAMES M. NABRIT, III
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Attorneys for Plaintiffs

VERIFICATION

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

CHARLES STEPHEN RALSTON, being duly sworn, deposes and says that he is employed by the plaintiff NAACP Legal Defense and Educational Fund, Inc. herein in the position of First Assistant Counsel; that he has read the foregoing complaint and knows the contents thereof and that the same are true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true.

/s/ Charles Stephen Ralston
CHARLES STEPHEN RALSTON

Sworn to and subscribed before me on this 25th day of March, 1983.

/s/ Ivalina R. Passé
Notary Public

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., ET AL., PLAINTIFFS,

v.

HON. DONALD J. DEVINE, DIRECTOR, UNITED STATES OFFICE OF PERSONNEL MANAGEMENT, DEFENDANT.

AFFIDAVIT OF PHYLLIS McCLURE

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

Phyllis McClure, being duly sworn, deposes and states:

1. I am a member of the staff of the NAACP Legal Defense and Educational Fund, Inc. In that capacity, I attended a Press Conference at the Office of Personnel Management on February 10, 1983 from five to six p.m., at which the new Executive Order on the Combined Federal Campaign was announced. The Press Conference was conducted by Joseph A. Morris, the General Counsel of the Office of Personnel Management.

2. Mr. Morris announced that the President had signed an Executive Order that afternoon at the White House which set forth new rules for participating in the Combined Federal Campaign. He stated that the purpose of this Executive Order is to overcome the Court decision that the prior rules for the Combined Federal Campaign were vague. This Executive Order is to assure a focus on "direct services" for the Combined Federal Campaign. It expressly excludes advocacy groups which influence public policy. Certain legal defense funds may be excluded, but legal aid groups will not. The distinction, Mr. Morris said, is that the legal defense funds discriminate in the cases they take on the basis of a cause, while legal aid groups provide services to all who are in financial need. Mr. Morris concluded his

introductory remarks with the announcement that regulations would be issued by the Office of Personnel Management in the future.

3. In response to a reporter's question about the line drawn between legal defense funds and legal aid societies, Mr. Morris said: "The line will be drawn by the conduct of the organization. If it discriminates on the basis of a cause or legal theory, rather than need, then it will be excluded. The line is not sharply drawn now but it will be in the regulations."

4. Another reporter asked what the figures were for this year's Combined Federal Campaign. Mr. Morris did not have the exact numbers but did say that there had been a slight increase in overall dollars, that the increase had not kept pace with the inflation, and that participation had declined. He made reference to threats of union boycotts in last year's Campaign and to letters, telegrams and phone calls to the Office of Personnel Management protesting the participation of new groups.

5. Another reporter questioned Mr. Morris' figures on the last Campaign. Mr. Morris said there had been a 2% increase in total giving. Then he asked an Office of Personnel Management official who was standing in the back of the room what the exact figures were. That official stated that there had been a 4% to 7% increase in total giving.

6. Mr. Morris also announced that the Special Contribution Fund of the NAACP would remain in the Combined Federal Campaign.

7. The Office of Personnel Management distributed a press release and attachments at the press conference. Attached hereto as Exhibit "A" is a true and accurate copy of the materials which I obtained at the press conference.

/s/ Phyllis McClure
PHYLLIS MCCLURE

Sworn to and subscribed before me this 21st day of March, 1983.

/s/ Gloria A. Jones
Notary Public

My Commission expires on: March 30, 1984

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
1900 E St., NW
Washington, D.C. 20415
News Unit, Room 5F10
(202) 632-5491

For Immediate Release
Thursday, February 10, 1983

PRESIDENT ORDERS FEDERAL DRIVE TO FOCUS ON CHARITY FOR TRULY NEEDY

(Washington, D.C.)—President Reagan has ordered the Combined Federal Campaign (CFC), the annual charity drive conducted nationwide in Federal workplaces by Government employees, to focus its support on voluntary health and welfare programs that are aimed directly at the needs of the poor, the infirm, the hungry, and the truly needy, according to Donald J. Devine, Director of the U.S. Office of Personnel Management (OPM), who oversees the CFC.

Devine announced the Presidential directive as he released copies of the new Executive Order that was signed today in Washington.

"President Reagan has now stated in unequivocal terms the purposes of the CFC," Devine said. "They are to lessen the burdens of government and of local communities in meeting needs of human health and welfare; to provide a convenient channel through which Federal public servants may contribute to these efforts; to minimize disruption of the workplace and costs to taxpayers; and to avoid the reality and the appearance of the use of Federal resources in aid of fund-raising for political and advocacy groups.

"The CFC will now put its emphasis entirely on support for those programs that help sustain the safety net for people in need," Devine continued. "The President has limited eligibility for participation in the Combined Federal Campaign to voluntary, charitable, health and welfare agencies that provide or support direct health and welfare services to individuals and families," he said.

The President's order includes a provision for local charities that are unaffiliated with any national organizations or umbre'la groups which will be permitted to take part in their respective local CFCs, provided that they meet the President's health and welfare criteria.

Devine said that such services "must consist of care, research, or education in the fields of human health or social adjustment and rehabilitation; relief of victims of natural disasters and other emergencies; or assistance to those who are impoverished and therefore in need of food, shelter, clothing, education, and basic human welfare services."

According to Devine, "The President has expressly excluded from the CFC any organization that seeks to influence elections or public policy determinations through political activity or advocacy, lobbying, or litigation on behalf of parties other than itself. This means," he explained, "that the advocacy groups, both left and right, that have been admitted to the CFC in recent years will be excluded from the campaign. Federal workers remain absolutely free, of course, to contribute to such organizations if they wish, but the taxpayers will not be asked to provide the fund-raising channel."

Devine further explained that the President's order will exclude from the CFC legal defense funds that litigate selectively on behalf of particular causes, while it will permit participation by legal aid programs that furnish legal services, without discrimination, to those in financial need.

Devine said, "This Presidential order was motivated by the deep conviction of this Administration that private sector contributions to the essential safety net should be encouraged and supported, and that it is unfair and unjust to have the Federal Government using its resources to promote any political or advocacy group, however well-intentioned it may be."

He acknowledged the controversy that has surrounded the admission of advocacy groups to the CFC in recent years. "That resulted from court findings that previous CFC rules were too vague and ambiguous to permit the CFC to focus exclusively on direct health and welfare services," Devine explained, adding: "President Reagan has now brought that vagueness and ambiguity to an end. Both the Department of Justice and our General Counsel are satisfied that the new directive is constitutional, and the President and I have been so advised."

Devine also acknowledged the fierce opposition of Federal employee organizations and labor unions to the recent past inclusion of advocacy groups in the CFC. "Sentiment favoring a wholesale boycott of the CFC was strong this last year," he said, "but the forbearance of Federal workers was heartening. Most workers still contributed to the campaign, but earmarked their donations for specific charities, thereby avoiding the possibility that their gifts would go to unwanted recipients." Devine added, "We asked the Federal workers to stay with the campaign and to give us one year to clean it up. They kept their part of the bargain, and now President Reagan has fulfilled our promise."

Devine noted that the new Executive Order also contains the following directives: International organizations that provide health and welfare services overseas will be permitted to participate in the CFC, even though, for obvious reasons, they may not provide any direct services in local American communities where Federal workers reside.

Devine said that he would soon publish proposed CFC regulations implementing the new Executive Order, and that organizational efforts for the Fall, 1983, CFC will shortly begin.

THE SECRETARY OF TRANSPORTATION
Washington D.C. 20590

December 16, 1982

MEMORANDUM FOR THE PRESIDENT

I understand you are giving favorable consideration to a revision in the Executive Order authorizing the Combined Federal Campaign. The revision will establish the CFC as a campaign to support voluntary agencies providing direct health and welfare services, and will exclude organizations involved primarily in promoting and advocating for special groups and special interests.

As the CFC Chairman this year, I know from firsthand experience that the campaign was seriously damaged by the controversy and anger created by the inclusion of many legal defense funds and other special interest groups which are not providing direct health and welfare services. We have suffered from unions boycotting the CFC; CFC headquarters has received an unprecedented 1,500 telephone calls and many letters from angry Federal employees, and participation probably will be down by 5,000 to 10,000 contributions from last year—all related to the inclusion of organizations which have "politicized" the campaign.

Although revising the Executive Order to exclude legal defense funds and other special interest groups will no doubt create a substantial negative reaction from the groups excluded, that reaction should be short term. I believe strongly that in the long term the survival of the CFC as a charitable cause—above controversy—whose sole purpose is serving the basic needs of all people, is absolutely dependent upon the suggested Executive Order revision.

I recommended the Executive Order be revised to protect the future of the CFC as a major positive force in voluntarism.

/s/ Drew Lewis

UNITED STATES SENATE
Washington, D.C. 20210
September 20, 1982

Mr. Benjamin T. Toyama
President
Hawaii Federal Employees Metal
Trades Council
P.O. Box 716
Aiea, Hawaii 96701

Dear Ben:

We are writing to express our deep concern over the possibility of a union boycott against the Aloha United Way (AUW) and the Combined Federal Campaign (CFC).

It is our understanding that this boycott was prompted by a recent decision of the CFC National Eligibility Commission which voted to admit the National Right to Work Legal Defense Fund to the group of agencies eligible to receive charitable contributions from federal employees under the Combined Federal Campaign. While we strongly agree with organized labor that the National Right to Work Legal Defense Fund has no place in a broad-based charitable appeal like the Combined Federal Campaign, we are concerned that a boycott of the CFC and the Aloha United Way by federal employee unions would place the success of the Combined Federal Campaign in Hawaii in jeopardy. Needless to say, the deep cuts made by the current administration in human service programs have made a successful AUW/CFC campaign imperative.

As you know, the Aloha United Way is only one of the many organizations participating in the Combined Federal Campaign. We have been assured by the Aloha United Way that none of the funds it receives directly or as undesignated funds from the CFC will go to the National Right to Work Legal Defense Fund. The Aloha United Way intends to continue its past efforts to limit eligibility in the Honolulu Area CFC to charitable agencies providing direct human care services in the fields of health and welfare.

Under the rules of the Combined Federal Campaign, the National Right to Work Legal Defense Fund will only receive monies federal and postal employees specifically des-

ignate as contributions to that group. We are informed that the AFL-CIO is urging all federal and postal union members not to designate this organization as a recipient of any of their CFC contributions. Officials of the national United Way have advised the AFL-CIO that its affiliates will distribute undesignated funds only to those agencies that have historically received such funds, and not to groups such as the Right to Work Foundation.

We also pledge to you and the other federal and postal employees unions that we intend to join other Members of Congress and the AFL-CIO in studying the structure of the Combined Federal Campaign and examining the need to revise the rules for participation in the program by charitable organizations.

For these reasons, we urge you, as President of the Federal Employees Metal Trades Council, to cancel the boycott by your membership of the Aloha United Way and the Combined Federal Campaign. Without your support, and that of the rest of organized labor in Hawaii, our State's voluntary human service organizations will be unable to provide vital services to needy citizens of our State.

Sincerely,

/s/ _____
DANIEL K. INOUYE
U.S. Senator

/s/ _____
SPARK MATSUNAGA
U.S. Senator

/s/ _____
DANIEL K. AKAKA
Member of Congress

/s/ _____
CEC HEFTEL
Member of Congress

Saturday, January 13, 1983—The Washington Post

GROUPS FIGHT EJECTION FROM CHARITY DRIVE

By Karlyn Barker
Washington Post Staff Writer

A broad range of health, minority, women's and environmental groups, protesting what they say is an attempt to kick them out of the federal government's annual charity drive, have asked President Reagan to reject a United Way proposal to limit eligibility in the Combined Federal Campaign.

Most of the groups were admitted to the CFC under the terms of an executive order issued last year by the president. They said they have heard the White House is considering issuing a new order that would result in about three dozen "non-traditional" charity organizations being kicked out of the campaign, at an estimated loss to them of more than $4.5 million.

"Federal employees like having a broader range of charities to support," the groups said in a letter to Reagan signed by 18 organizations, among them the Native American Rights Fund, the Committee for Responsive Philanthropy, the Center for Science in the Public Interest, and legal defense funds for Federally Employed Women and the Sierra Club. They urged him to reject the United Way proposal as directly contradicting Reagan's efforts to increase private giving.

Last September, United Way of America asked the White House to restrict participation in the CFC to "charitable agencies providing direct, human-care services in the fields of health and welfare, including health research." United Way argued that inclusion of less traditional service groups had hurt charity contributions.

The example cited in the letter to Reagan was the National Right to Work Legal Defense Foundation, whose admittance to the CFC last year, United Way said, had sparked a boycott of the campaign by some unions.

CFC raised $87 million in employee contributions in 1981, $12 million of it in the Washington area. But a controversy

in recent years over the number and types of organizations that should be allowed to participate has kept the campaign in legal and political upheaval.

Some groups, usually those long established in the drive, have argued that opening the campaign to many, new organizations confuses givers and spreads contributions too thin. But groups who have gone to court to gain admittance say expanding the CFC has increased overall donations by providing a wider choice of charities.

"... When employees have more choice of charities to support, they give more," the charity groups said in their letter, to be sent to Reagan today. They said that, according to the Office of Personnel Management, charitable giving in federal offices is up more than 7 percent this year, the first time since 1977 that the increase in giving outpaced inflation.

Rocky Mountain News, Wed., Dec. 29, 1982, Denver, Colo.

REAGAN EYES ACTIVIST FUND CUT

By John Bennett
Scripps-Howard Staff

WASHINGTON—President Reagan is considering an executive order to halt a growing number of activist organizations from using federal employee payroll deductions to finance their causes.

Officials of the Combined Federal Campaign warn that unless Reagan restricts the groups, their 20-year-old fundraising efforts in behalf of such organizations as the Red Cross and Salvation Army could be seriously impaired.

Bill Schaeffler, director of the 294-organization charity campaign in the Washington, D.C., area, said federal worker opposition to 34 new activist groups was chiefly responsible for 9,000 fewer workers contributing to traditional health and welfare causes this year.

A federal court here ruled two years ago that the National Association for the Advancement of Colored People Legal Defense Fund and the Puerto Rican Legal Defense Fund may share funds from the Combined Federal Campaign, unless they were specifically excluded by presidential order.

Officials with the Office of Personnel Management report 50 new checkoff applications for 1983. "If the trend continues, the campaign will be unmanageable," said Joseph Morris, general counsel for OPM.

The traditional organizations joined the combined campaign after President Kennedy authorized it in 1961. About 260 groups would remain if Reagan restricts membership.

Some of the new groups include the National Right to Work Educational Foundation, the Sierra Club, Planned Parenthood, National Organization for Women Legal Defense Fund, the Children's Defense Fund and the Conservative Legal Defense Education Fund.

One pending application is from the National Association for the Advancement of White People, which wants to fi-

nance white supremacy propaganda through federal employee contributions.

"If the NAACP Legal Defense Fund can do it, why can't we?," asked David Duke, a former Ku Klux Klan leader and president of the three-year-old, 5,000-member Louisiana-based organization.

Wednesday, August 4, 1982—The Washington Post

AN UNCHARITABLE BATTLE FOR THE CONTRIBUTIONS OF FEDERAL WORKERS

By Karlyn Barker
Washington Post Staff Writer

The AFL-CIO is furious that the National Right to Work Legal Defense Fund got in. The National Right to Life people, who just got in themselves, want Planned Parenthood out, and Planned Parenthood, still in although it almost got kicked out, has gone to court because it is no longer as in as it used to be.

Being in, in this case, means being included in the government's $87 million Combined Federal Campaign, an annual charity drive that has sparked some rather uncharitable battles for the contributions of federal workers.

In the past several years a number of advocacy groups have successfully sued to be included in the campaign, arguing that their work is just as worthy as more traditional charities. The latest battle has a more ideological edge to it, and the long controversy over who should be in and who should be out has never been more heated.

Donald J. Devine, director of the Office of Personnel Management and a Reagan appointee with impeccable conservative credentials, last month certified the National Right to Work Legal Defense Fund, a probusiness, antiunion group, the antiabortion National Right to Life Educational Fund and 109 other organizations for participation in this year's campaign. Including Planned Parenthood among those groups, he overruled a Devine-appointed eligibility committee, which had recommended the organization's exclusion.

Devine said all the groups met the criterion for participation in the campaign, to which federal workers may contribute through payroll deductions.

But Devine's decision has brought howls of protest from prolabor and antiabortion camps.

AFL-CIO president Lane Kirkland called Devine's admission of the Right to Work group, which opposes compul-

sory union membership, "an insult to President John F. Kennedy," who set up the charity campaign in 1961. The labor leader said federal workers were being asked to contribute to an organization whose goals are contrary to their own interests.

And at a meeting this week of 36 unions who represent federal workers, Kirkland said organized labor would fight to have the Right to Work group's eligibility rescinded and would urge federal employes, some of whom are said to believe the group promotes the creation of jobs, not to contribute to the organization.

OPM spokesman Pat Korten said yesterday that while no prolabor group is included on the government's charity list, there is nothing to preclude a labor organization from qualifying for the campaign under current guidelines. An AFL-CIO spokesman said in New York that prolabor forces didn't want to have to qualify as a charity in order to prove that antilabor forces are not a charity.

Also unhappy is the National Right to Life Committee, which, though newly admitted to the Federal charity circle, wants Planned Parenthood excluded. The group has complained Planned Parenthood is "the largest promoter and provider of abortion in the country" and as such "has no place" in the government's charity drive.

Devine, an ardent abortion foe, said he was "reluctantly" allowing Planned Parenthood to continue in the campaign because he felt it met OPM's eligibility requirements. But the National Right to Life group has challenged that assessment and called on OPM to investigate what it says are Planned Parenthood's numerous violations of government solicitation restrictions.

Planned Parenthood, which has denied the Right to Life assertions, has its own problems with Devine and this week took the OPM director to court to try to overturn his reclassification of the family planning group. OPM has shifted the group, which raised about $800,000 in last year's charity drive, from the International Services Agencies campaign category to the National Service Agencies category, a move Planned Parenthood says will cost it about $200,000 in charity contributions.

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In a letter to attorneys for Planned Parenthood, Devine said the organization's activities are "significantly domestic in scope" and that only 10.6 percent of its revenues are spent on international services. He said Planned Parenthood will still be entitled to all the contributions specifically earmarked for it by federal donors.

A Planned Parenthood spokesman said yesterday that his organization is composed of 190 separate affiliates around the country.

September 13, 1982—Federal Times

NALC DELEGATES BACK SOMBROTTO, WILL BOYCOTT CFC

Vincent L. Sombrotto was reelected president of the National Association of Letters Carriers by acclamation of delegates to the Union's convention in San Francisco.

Eight other resident national officers and ten national business agents also were re-elected without opposition—the first time so many were unopposed since the one-man, one-vote rule took effect in 1964, a spokesman said.

These officers, and nine other officials to be elected by mail ballot, will serve four-year terms approved by the convention to replace the existing two-year terms.

The convention also approved non-contributory retirement programs for all national officers.

Per capita dues paid to the national office were raised from $68 to $72 a year.

Delegates voted to boycott the Combined Federal Campaign this fall because of the inclusion of the National Right to Work Legal Defense Foundation as a participating charity. The boycott will be lifted in local CFC areas which have rejected the Right to Work group as a participant, a spokesman said.

Sombrotto urged letter carriers to make contributions directly to charities by personal check rather than through the CFC payroll deduction plan.

A convention vote to boycott the United Way was later rescinded by the union's executive council after a United Way official assured Sombrotto that the charity umbrella group was not associated with the Right to Work organization.

Mail ballots will be distributed September 22 for contested positions in the union, including the slot of health insurance director, now held by R. J. Buntz. Three trustees and five national business agents also will be elected by mail referendum.

Re-elected without opposition to resident national officer positions were Tony R. Huerta, executive vice president; Francis J. Conners, vice president; Richard P. O'Connell,

secretary-treasurer; Ialline Overby, assistant secretary-treasurer; Joseph H. Johnson Jr., director of city delivery; Mark Roth, director of retired members; William M. Dunn Jr., director of life insurance; and Anthony B. Morell, assistant director of life insurance.

Re-elected as national business agents were David M. Bybee, Jim Edgemon, Lawrence Hutchins, Ben Johnson, Robert Massaroni, Gene McNulty, John W. O'Shea, Jack R. Sebolt, Robert Vincenzi and Wayne E. White.

Chosen as AFL-CIO delegates were Anita Guzik, Sid Klein, Mike O'Connor, J.C. Taylor and Ronald Tyeskey.

Honolulu Star-Bulletin—8/21/82

GOVERNMENT CHARITY DRIVE DRAWS BLAST

By Lea Catterall
Star-Bulletin Writer

The federal government was criticized yesterday by a group of federal employee unions for including anti-union organizations as beneficiaries of its annual charity drive.

Ben Toyama, president of the AFL-CIO Metal Trades Council, said the council may ask federal employees to boycott the Combined Federal Campaign because of its inclusion of the National Right to Work Legal Defense Foundation, the Pacific Legal Foundation and other "right-wing" groups.

Inclusion of such groups, especially the Right to Work organization, has prompted national outrage from labor unions. The Right to Work group has fought laws requiring union membership of employees in a business where the majority of workers want the union.

In testimony this week before the Federal Executive Board, which coordinates inter-agency federal programs here, Toyama called the charity campaign "a fraud and an evil money-making machine for organizations other than humanitarian charities."

EXECUTIVE board director Gerry Silva said no money raised in the campaign will go to the Right to Work foundation or any other "national service agency" that is not designated by the employee in his contribution form.

However, Toyama said the trades council, which includes 13 unions representing federal employees here, will not participate in a campaign "that raises funds for organizations that are not compatible with the principle and philosophy of the labor movement."

The Right to Work organization and other adversary groups were included in such federal charity campaigns this year by President Reagan.

Of nearly $1.9 million raised in last year's Combined Federal Campaign, $1.5 million went to Aloha United Way, about $325,000 went to national health and international

service agencies and $42,783 was designated for national service agencies.

Silva said he expects a lesser amount to go to national service agencies this year because of a change in rules of distribution. National service agencies last year received a share of the money that was collected without designation, but they will receive no undesignated money this year, he said.

Bremerton Sun—Tuesday, Oct. 19, 1982

Politicized CFC contributions lag

By Debby Norman
Sun Staff Writer

Donations to this year's Combined Federal Campaign, which is being boycotted by local unions, are running far behind the 1981 drive, according to Bremerton Metal Trades Council President, Larry Ferlaak.

Puget Sound Naval Shipyard's house organ, the *Salute*, reported Friday that donations totaled $41,760.48, or 14.2 percent of this year's shipyard goal.

The goal is $295,000.

But Ferlaak said that at the same point in last year's campaign, the PSNS part of the drive had reached 59 percent of its goal.

Bruce Andrae, shipyard public affairs officer, acknowledged that this year's CFC donations have been projected to fall behind last year's.

"But last year was a record year, Andrae said.

In last year's record-breaking CFC campaign, PSNS employees donated $344,299, exceeding the goal of $280,000.

Joseph E. Kieta, chairman of the Local Federal Coordinating Committee of the Kitsap-North Mason CFC, has attributed the lag to the union boycott of CFC.

"...Our CFC campaign could be a total failure for the first time in 19 campaigns," Kieta wrote in a letter to Donald J. Devine, head of the federal Office of Personnel Management.

Devine, a Reagan appointee, initiated the controversial policy changes which politicized the CFC drive and prompted the union boycott. Kieta's Oct. 15 letter was the second in three days written to protest the recent extension of politically oriented groups from the national to the local CFC.

"Approximately 70 percent of all eligible to participate in our local campaign are unit members of those unions boycotting our campaign," Kieta wrote.

"After two weeks into this CFC, Puget Sound Naval Shipyard, the largest contributor into the Kitsap-North Mason CFC, is only 15 percent of its goal (compared to) 59 percent after two weeks into the previous campaign."

CFC began Oct. 4 and will end Nov. 12.

The charity drive hadn't even begun when the county's major labor groups representing federal employees announced that they would boycott the drive. The unions acted in protest of Devine's inclusion of political groups in CFC for the first time in the drive's history.

Union leaders were especially irked at the inclusion of the anti-union National Right to Work Legal Defense Fund among the recipients of CFC money under the "National Service Agencies" category.

But OPM now is forcing the CFC to add political groups to the local CFC roster, too, according to Ferlaak.

OPM has ordered two such groups, the Sierra Club Legal Defense Foundation, Inc. and the conservative Pacific Legal Foundation, added to the local CFC list, Ferlaak said.

OPM overturned a decision by the local Federal Coordinating Committee not to allow the groups, Ferlaak said. Traditionally, the coordinating committee has determined which groups will be placed on the local CFC roster, in line with federal regulations. Ferlaak said OPM now is usurping that role.

Kieta is appealing both decisions. In letters to Devine dated Oct. 13 and Oct. 15, he noted that neither group has a local office, which is one of the criteria for a group to be placed on the CFC roster.

"Seattle, Wash., was listed as the local contact, but Seattle is not part of the Kitsap-North Mason local community," Kieta's letter noted.

In addition, he said, the campaign's literature already has been printed and it would be difficult to add the two organizations' names to 30,000 CFC brochures.

Meanwhile, an alternative charity effort supported by the unions appears to be moving slowly.

Ferlaak said this morning he has had about 50 "allotment" forms for the United Way campaign returned to his

office. But union officials supporting the United Way drive haven't really started pushing it yet, he added.

The allotment effort was started as a way for union supporters to bypass the CFC and give directly to the United Way by filling out "allotment" or payroll deduction forms.

The United Way receives most of the local CFC money, but United Way officials have voiced fears that this year's United Way drive might be hurt by the CFC boycott.

The Washington Times TUESDAY, JANUARY 18, 1983 / PAGE 11A



BEST AVAILABLE COPY

VETERANS ADMINISTRATION
Office of the Director

January 17, 1983

Honorable Donald J. Devine
Director
U.S. Office of Personnel Management
Washington, DC 20415

As Medical Center Director and Chairman of the Dallas-Fort Worth Federal Executive Board I wish to apprise you of my concern relating to the upcoming Combined Federal Campaign (CFC).

First, we were successful in last year's campaign because we devoted additional time and efforts to this important purpose. We spent additional time trying to explain to our employees the change taking place regarding the admission of nonhealth and welfare organizations. We were successful in getting them to support the CFC by asking them to designate the organization which they supported. Even though we met our goal dollar-wise the actual number of employees contributing decreased. I feel we cannot sustain this level of support for the 1983 campaign for the following reasons:

1. We cannot devote the additional time of our staff to further sell the CFC without detracting from our Agency mission.

2. Employees have made it clear they will not participate at all in the CFC if nonhealth and welfare organizations are admitted.

3. The AFGE local was convinced to support the CFC last year with the understanding that something would be done before the 1983 campaign. There was strong talk of boycotting the CFC last year by union members. It is my opinion that this will happen in 1983 if nonhealth and welfare organizations are admitted.

4. Employees do not trust the system of "designation" because of all of the confusion raised on the meaning of this term. Employees have expressed a desire to designate their gift but want the money to go to a local organization and not the national organization for distribution. I feel em-

ployees need this option if we expect them to continue supporting the CFC.

I feel compelled to urge you to respect the wish of our employees and agencies and take a firm stand to restrict the CFC to the traditional health and welfare organization. If you elect to continue admitting the nontraditional agencies you will lose the support of management, employees, employee organizations and the Federal Executive Boards, which have traditionally supported the CFC.

Please give this your personal attention and support.

/s/ C. Wayne Hawkins
C. WAYNE HAWKINS
Medical Center Director

DENVER METROPOLITAN AREA
COMBINED FEDERAL CAMPAIGN
Office of the Director

14 January 1983

Dr. Donald J. Devine, Director
Office of Personnel Management
1900 E. Street, NW
Washington, D.C. 20415

Dear Dr. Devine:

The 1983 Denver Metropolitan Area Combined Federal Campaign was a success. However, many complaints were received from management officials, union officials and members, and other Federal employees concerning the inclusion of nontraditional, activist health and welfare organizations.

The success of this year's campaign can be attributed to the outstanding efforts and commitment of agency managers, loaned executives, and other CFC staff. In addition, we were able to obtain the support of the American Federation of Government Employees, the American Postal Workers Union, and several smaller unions. Two unions did boycott this year's campaign with visible negative effects which these unions hoped to obtain. AFGE's support this year came with the promise to boycott the 1984 campaign if regulations continue to provide for inclusion of activist, political organizations such as the National Right to Work Legal Defense and Education Foundation, Inc.

Early responses to a sample survey conducted among Federal employees in our area show approximately 80 percent of the respondents preferring that CFC be restricted to traditional health and welfare organizations which provide for basic human needs. In narrative comments, many employees stated that although they supported this year's campaign, they would not support future campaigns if politically oriented, activist organizations continued to be included. Final results of this survey will be included in our after action report which will be forwarded at a later date.

I am confident that future CFC's will not succeed unless revisions to the existing regulations include exclusion of organizations involved in litigation for special interests or those of a political or quasi-political nature.

I understand current regulations governing the CFC are under review for possible revisions. I strongly encourage you to assure these revisions include changes to the eligibility criteria for participation by health and welfare organizations which restrict participation to only those charitable organizations providing traditional basic human needs. If such changes are not made, the future of the Combined Federal Campaign will be in jeopardy.

As Chairman for the 1984 campaign, I have a vested interest in future programs.

Sincerely,

/s/ Theodore D. Wood

THEODORE D. WOOD
Chairman
1984 Denver Metropolitan Area
Combined Federal Campaign

WESTERN UNION MAILGRAM
MAILGRAM SERVICE CENTER
MIDDLETOWN, VA. 22645

Donald J. Devine, 1/11/83
Director Office of Personnel Management
900 E St. Northwest
Washington, DC 20405

The labor community in the Seattle King County area does not and will not support the inclusion of non health and welfare agencies and organizations in the Combined Federal Campaign (CFC). Boycotts will again flourish in upcoming CFC and United Way campaigns if advocacy and other politically oriented organizations are included at the further expense of local health and welfare agencies and organizations. We urge you to modify the regulations accordingly.

CHARLES D. DAVIS
President National Treasurers Employees Union Chapter 30

WESTERN UNION TELEGRAM

January 11, 1983, 12:04 p.m.

Donald J. Devine,
Director,
Office of Personnel Management
900 E St. N.W.
Washington, D.C. 20415

Mr. Craig Fuller
Special Assistant to the President
White House
Washington, D.C. 20500

Director Office of Personnel Management
900 E St. N.W.
Washington, D.C. 20415

As a member of both organized labor and Heart of America United Way's Board, I strongly urge reconsideration of OPM's regulations for CFC agency. Those whose purpose is legal defense rather than health or welfare have no place in CFC, and can damage both CFC and United Way fundraising efforts.

cc: Lane Kirkland
President,
National AFL-CIO
815 16th Street, Northwest
Washington, D.C. 20006

Bill Aramony,
President,
United Way of America
United Way Plaza
Alexandria, VA 22314

Lillian McKittrick

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., ET AL., PLAINTIFFS,

v.

HON. DONALD J. DEVINE, DIRECTOR, UNITED STATES OFFICE OF PERSONNEL MANAGEMENT, DEFENDANT.

AFFIDAVIT OF CHARLES STEPHEN RALSTON

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

CHARLES STEPHEN RALSTON, being duly sworn, deposes and says:

1. I am presently employed by the NAACP Legal Defense and Educational Fund, Inc., in the position of First Assistant Counsel. One of my duties is preparing and overseeing the submission of applications for participation by the Fund in the Combined Federal Campaign.

2. In 1980 when the Fund first applied to participate in the final decision on our national application was not reached until June, although an action was filed in court in less than three weeks after denial a preliminary injunction was not granted and the net result was that the Fund received no moneys from the 1980 Combined Federal Campaign because it was held beginning in late August through Thanksgiving of that year.

3. In 1981 following this Court's order we were admitted to the Combined Federal Campaign after an initial denial by the Eligibility Committee. In June again of that year approval by the Office of Personnel Management as a national agency was only the first step in the application process.

An organization is not actually in any Combined Federal Campaign as a result of such approval but must file separate application to 560 local combined federal campaigns. Those locals then decide whether an organization meets the local eligibility requirements. In 1981 we prepared and filed applications within two weeks after the approval of the Fund's at the national level. Nevertheless many local CFCs denied our applications on the ground that they were too late under their local rules. A number of others denied applications on a variety of grounds because of the proximity to the beginning of the Combined Federal Campaign. We were unable to effectively challenge their denials. Thus, we were admitted to less than half of the local combined campaigns.

4. Because OPM had announced that they were going to substantially revise the existing regulations we did not seek to challenge our denial to local CFCs through litigation in 1981. Following a long period in which a proposed executive order was substantially modified the Office of Personnel Management finally issued new regulations in May, 1982. We had earlier filed an application under the old regulations at the nationwide level and had sent out applications to all 560 local CFCs in the spring of 1982. With the issuance of the new regulations we had to file a new national application and, after approval in late July, 1982, we filed a whole new set of revised application in all 560 local CFCs. This was done by mid-August, 1982. Again, we were denied by a substantial number of local CFCs and appealed a number of those denials to OPM. We were successful on some appeals, but were denied in others. Again it was too late in the year to secure judicial relief from these denials so that we could be included in all local combined federal campaigns by the time they began and ended in the early Fall. An action has been filed challenging the regulations leading to denials of participation by local campaigns and that action is presently pending before the Hon. Joyce Hens Green, C.A. No. 81-2999.

5. In early January, 1983 we filed with OPM our application for inclusion in the 1983 Combined Federal Campaign. Under the existing regulations since we have already been

approved as a national service agency we were simply required to provide updated information relating to our current budget, expenses, changes in our Board of Directors, et cetera. We have every expectation that under the new existing regulations we would be approved as a matter of course and be permitted to participate in the 1983 Campaign. To avoid the time problems from prior years we have also filed, under the present regulations, applications to all local combined federal campaigns. The process of preparing and sending out 560 separate applications was completed by the end of February, 1983. We expect to be admitted as a matter of course into close to half of the local CFCs under the existing regulations.

6. Based on three years of experience with the CFC application procedure, I would expect that if new regulations are issued, they would not be able to be in full effect until May, 1983, at the earliest. In the past the application and approval procedure has taken close to a month, and therefore we would not receive word of a final action on application under any new regulations until June. Even if we promptly start an action in court the chances are great that we would run into the same time problems as before, since not only would we have to be approved by OPM at the national level but 560 local combined federal campaigns would then have to act on our applications. Many of the local CFCs personally have told us that they have experienced great problems if applications are received late because they are unable to give them their full attention and they are faced with the problem of having fund-raising brochures and other materials printed in time for the beginning of the CFC. Indeed, a number of local CFCs have expressed gratitude towards us for having filed applications early in the process since that is of great aid and assistance to them. Therefore, the early resolution of the issue of whether plaintiffs will be approved at the national level will not disrupt the CFC but will be of benefit to it in being able to be conducted on a timely and organized basis.

7. Because of my involvement in the Legal Defense Fund's efforts to gain admission to the Combined Federal Campaign since late 1979 and early 1980 I have been kept

informed as to developments with regard to the executive order and regulations governing the same. I have obtained the information that follows either through personal knowledge, conversations with government officials, or through the documents attached hereto as Exhibits B through I.

8. Following the ruling of this Court in January, 1981 the new head of the Office of Personnel Management, Dr. Donald J. Devine announced that because of shortness of time all legal defense fund type organizations would be admitted pending the eventual promulgation of new regulations. See Exhibit B attached hereto, a true and accurate copy of OPM CFC Memorandum No. 81-2. In the summer of 1981 myself and other representatives of organizations that had been placed in the National Service Agencies group met with Dr. Devine to express our views as to any contemplated new regulations. Subsequently in October, 1981, we submitted to him a statement of our joint views. I was the principal author of the statement, which was signed by the National Service Agencies (NSA) group, organization representing 14 organizations. See Exhibit C attached hereto, which is a true and accurate copy of the NSA statement presented to the Office of Personnel Management. The position the NSA took was that the Combined Federal Campaign should be open to the widest possible range of organizations so that federal employees could chose the ones they themselves felt worthy of their support.

9. In December, 1981, it was learned that the Office of Personnel Management had submitted to the Office of Management and Budget a proposed new executive order which would seek to overcome one of the perceived difficulties discussed by this Court in its January, 1981 decision; *i.e.*, the direct services rule was not authorized by the existing executive order. Attached as Exhibit D is a true and accurate copy of the Memorandum from OPM to OMB. The new executive order would exclude legal defense funds and other litigating organizations, the NSA as a whole and many of its constituent organizations, including both of the named plaintiffs herein, made their opposition to the proposal known to officials at the White House.

10. Eventually, on March 23, 1982, a new executive order was issued, E.O. 12353, which made no substantive changes in the eligibility requirements to gain admission to the CFC. On July 6, 1982 OPM issued new regulations (5 C.F.R. Part 950) which completely superseded the Manual for Fund Raising in the Federal Service. The new regulations specifically included legal defense fund type organizations. A press release was issued by the Office of Personnel Management with the new regulations in which it was pointed out that the federal employees would now have a wide choice of charitable agencies from which to pick. Attached hereto as Exhibit E is a true and accurate copy of the OPM press release.

11. Both plaintiffs continued to be approved under the new regulations, and a number of other legal defense fund-type organizations were admitted. One of the organizations so admitted was the National Right to Work Legal Defense Foundation whose function is to support litigation challenging compulsory unionism. As a consequence a number of unions took the position that the CFC and the United Way should be boycotted entirely. See Exhibit F attached hereto, a true and accurate copy of a letter issued by the International Association of Mechanical and Aerospace Workers.

12. However, the AFL-CIO itself did not call for a boycott, but rather urged that federal employees designate the specific organizations they wished to support so that none of their money would inadvertently go to the National Right to Work Legal Foundation. Attached hereto as Exhibit G is a true and accurate copy of the statement by the AFL-CIO.

13. Shortly thereafter the executive committee of the Board of Governors of the United Way of America passed a resolution urging that the Combined Federal Campaign be limited to the provision of "direct health and welfare services". The resolution specifically pointed to the alleged controversy arising from the inclusion of certain organizations. The resolution was brought to the attention of the White House. Attached hereto is Exhibit H which is a true and accurate copy of the United Way resolution and a letter addressed to the White House.

14. Plaintiffs and other organizations again made their views known to the White House and urged that excluding organizations based on the nature of their programs would violate the Constitution and would be contrary to the principle that federal employees should be able themselves to decide between a wide range of organizations. Attached hereto is Exhibit I, a true and accurate copy of the letter sent by the Director-Counsel of the NAACP Legal Defense and Educational Fund to the President of the United States expressing the views of the Fund with regard to the Combined Federal Campaign. In the letter to the White House the Legal Defense Fund pointed out that, contrary to some statements, it had not been its experience that donations had gone down. Indeed, the Fund attached to the letter a memorandum sent out by the Milwaukee Wisconsin CFC noting that not only had the 1982 CFC exceeded the prior year's record receipts but had exceeded its goal by more than $60,000. In general, the pledges to the NAACP Legal Defense Fund have been greater in 1982 than in the prior year.

15. As a NSA group member the Legal Defense Fund has just recently received a report from the capital area Combined Federal Campaign dated March 2, 1983. The capital area CFC encompasses the Washington, D.C. area and is by far the largest single contributor to the overall CFC. This report shows that of over $13 million in total pledges, more than $1 million had been pledged by federal employees, as of March 2, to NSA group members. Of this $1 million, 32% has been pledged to legal defense fund type organizations, including the plaintiffs and similar organizations. Thus, as of that date federal employees in the Washington, D.C. area had contributed more than $350,000 to legal defense fund organizations despite their alleged "controversial" character. Since in the past the capital area Combined Federal Campaign has represented approximately 12% of all CFC receipts nationwide it can be estimated that legal defense fund overall can expect to receive about $2 million in donations from federal employees and

military personnel. Indeed, the National Right to Work Legal Foundation itself has received to date $30,000 in designated pledges from the capital area CFC, despite the controversy over its inclusion. Thus, it is clear that many thousands of federal employees wish to contribute to organizations such as plaintiffs through the CFC payroll deduction system. Attached hereto as Exhibit J is a true and accurate copy of the March 2, 1983 report from the capital area CFC just received by plaintiffs.

16. On December 13, 1982 I attended a meeting in New York City sponsored by Philanthropy Weekly. Dr. Donald J. Devine, Director of OPM appeared and spoke concerning the Combined Federal Campaign. At that meeting he stated that initial projections indicated that receipts for the CFC were up 7% over receipts in 1981.

17. On March 18, 1983, we obtained a copy of a memorandum dated February 2, 1983, from defendant Donald J. Devine to the Assistant to the President for Cabinet Affairs. The memorandum, a true and accurate copy of which is attached hereto as Exhibit K, explains the reasons and bases for the new executive order.

/s/ Charles S. Ralston
CHARLES STEPHEN RALSTON

Sworn to and subscribed before me this 23rd day of March, 1983.

/s/ Gloria A. Jones
GLORIA A. JONES
Notary Public

EXHIBIT B, RALSTON AFF.; C.A. NO. 83-

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

June 9, 1981

CFC MEMORANDUM NO. 81-2

MEMORANDUM FOR DEPARTMENT AND AGENCY FUND-RAISING PROGRAM COORDINATORS AND CHAIRMEN, FIELD COORDINATING GROUPS

SUBJECT: 1981-1982 Fund-Raising Bulletin for the Combined Federal Campaign

I. THE COMBINED FEDERAL CAMPAIGN

The Combined Federal Campaign has been the subject of a great deal of recent attention and controversy. In spite of these difficulties, the traditional generosity of Federal employees, and the dedicated work of volunteers in agencies at all levels has resulted in an outstanding response to the many worthwhile needs that are represented in these campaigns. I urge that Federal employees continue this much needed support.

In a recent decision by the U.S. District Court for Washington, D.C., *National Legal Defense & Education Fund, Inc.*, v. *Alan Campbell*, the Court exhorted action by the Office of Personnel Management. The Court said, "It behooves the government officials responsible for the [CFC] program to re-examine the basic premise on which the program was established so that more acceptable standards can be developed which will assure continuation of the government's significant and useful support for worthy charitable solicitation." I am determined that the Office of Personnel Management turn its attention to this important task. In the past, the program has been inadequately administered and too loosely regulated by OPM.

Although past congressional hearings, Court decisions, and discussions by affected public and private officials prepare one to understand that there are problems with the administration and regulation of the program, the more

deeply one goes into the matter, the more apparent is the need for clearer direction and more precise standards. In this year's submissions for eligibility to the CFC, the Committee on Private Voluntary Agency Eligibility (called the Eligibility Committee) has found over 30 examples where eligibility criteria have not been clearly met. The Eligibility Committee report to the Director recommends: "that, if the deficiencies noted above are not corrected in applications submitted for the full 1982 campaign, the Director deny renewal of fund-raising privileges. All applications must be treated in a fair and consistent manner."

The present criteria for eligibility are set forth in the "Manual on Fund-Raising Within the Federal Service for Voluntary Health and Welfare Agencies." The Manual has an ambiguous status as a regulatory guideline. It would have firmer legal grounding if it were based on a Federal Personnel Manual issuance, a Federal Register issuance, Executive Order, or a statute.

The campaign was established pursuant to Executive Order 10927, issued on March 18, 1961. That Order delegated authority to the Chairman of the Civil Service Commission (now Director, Office of Personnel Management) to:

> make arrangements for such national voluntary health and welfare agencies and such other national voluntary agencies as may be appropriate to solicit funds from Federal employees and members of the Armed Forces at their place of employment or duty statior..

Because of the discretion given to the Director of the Office of Personnel Management by the Executive Order, additional regulatory authority was recognized. This resulted in the publication of the Manual. The appropriateness of regulation was accepted in *NAACP Legal Defense and Education Fund, Inc. et al.*, v. *Alan Campbell*, although the Court did not rule on whether it would have been more appropriate through FPM or Federal Register issuance.

II. GOVERNMENT INTEREST IN REGULATING THE CFC

NAACP-LDEF, et al, v. *Campbell* finds a "legitimate government interest" (page 8, line 4) to conduct the CFC. Yet, the Court also finds that there are First Amendment

protections which related to the conduct of the CFC. It does this on the basis that "by providing organizations the opportunity to participate in the CFC, the government has, in effect, provided a billboard or a channel of communication" (page 4, line 14). But the Court is absolutely clear that it recognizes "the CFC itself serves the legitimate government interest in regulating interference with employees during the work day, and insuring that organizations with access to employees at the workplace are responsible in the use of monies collected" (page 8, line 4).

Although some have argued that the First Amendment protection is absolute, and therefore that all applicants must be admitted to the campaign, it is clear that the Court in *NAACP-LDEF et al* v. *Campbell* recognizes limits on First Amendment rights. The Court, first, recognizes that the Combined Federal Campaign itself is a limit on the First Amendment right to direct access to government employees by individual charitable agencies. The Court very precisely gives criteria which would allow "the legitimate government interest" to be applied. It mentions "fraud, crime and undue annoyance" (page 8, line 4). For budget-based criteria, it holds that there must be a "screening of the budget." And percentage base restrictions cannot be "unformulated" (page 6, line 19). Again, to exclude organizations, evidence must be presented which is "appropriate" (page 7, line 22). And the Court says such criteria cannot be established "cavalierly" (page 7, line 27).

Therefore, it is clear that the Court in *NAACP-LDEF et al* v. *Campbell* recognizes a legitimate government interest to regulate in this area. This interest likewise is recognized in other strong First Amendment protection cases, such as *Schaumburg* v. *Citizens for Better Environment* (44 US 620, 87 L Ed2d 73-100 S C t 826).

III. THE FIRST AMENDMENT AND THE NEED FOR PRECISION

The Court, in *NAACP-LDEF et al.* v. *Campbell*, however notes, "it is clear the government must meet First Amendment strictures in its regulations concerning access to this channel of communications." The Court, further, sets the criterion by which First Amendment rights can

only be limited: "when the government restricts First Amendment activities, the restriction must at the outset be set forth with precision" (page 8, line 12).

The court, therefore, recognizes both a legitimate government interest in this area and the necessity that this be balanced against First Amendment rights. Constitutionally, all such limitations must be set forth with precision.

IV. DECISIONS FOR THE 1981-1982 CAMPAIGN

The one clear fact about the CFC is that its standards lack precision. Therefore, I do not find that the government interest, as represented in the current standards of the Manual, is drawn at present with enough precision to meet First Amendment protections.

One alternative is to discontinue the campaign. Yet, in a period of fiscal constraint in government, the survival of sources of private charity to compensate for what government cannot spend is an important consideration. The CFC is a major source of income for American charities. The charities it supports, for the most part, provide services which are essential for America's and the world's needy. This decision, however, should be evaluated again next year.

The ideal solution this year, assuming that the campaign should continue, is to revise the regulations to make them more in accord with the precision required by the First Amendment. I have come to the reluctant conclusion that it is too late to do so for this year's CFC. Such regulations would have an *ex post facto* unfairness and, for practical reasons, it is probably too late in the planning process to make the wholesale revisions which are necessary.

The only remaining alternative is to continue the CFC but to apply the Manual regulations liberally, to make access relatively easy. The government interest is protected by exercising some restrictions, while First Amendment considerations become paramount in the light of the vague standards. This is the course we have chosen for this campaign.

V. APPLICATIONS NOT APPROVED

Using the very liberal interpretation referred to above, only ten applications are not recommended to the CFC. All of these are rejected only for severe departures from the regulations. The following are not included because applications were not even completed: Interfaith Hunger Appeal, Japanese American Citizens League, and National Association to Aid Fat Americans. The Asthma and Allergy Foundation is not recommended because it does not require any financial reports at all of its subordinate units. The Meharry Medical College is not recommended because of inconsistencies found in its financial reporting to OPM; similar difficulties were encountered with the National Concilio and the Natural Resources Defense Council. The National Council on Aging and the National Association for the Deaf are turned down for their *extreme* lack of public support: the former raises only one percent of its revenue from the public directly and the latter only two percent. The Center for Science in the Public Interest is turned down because it prepares no annual report to the public.

VI. BORDERLINE CASES

Seven applications were denied by the Eligibility Committee on grounds that the submitting agencies were not health and welfare groups, but rather political or advocacy groups. There was also the difficulty which arose in last year's CFC decision regarding whether they provide direct services, as required by the Manual. This is the matter directly touched on the *NAACP Legal Defense and Education Fund, Inc., et al* v. *Campbell* case.

I find some merit in the argument that these are not agencies which fall under Executive Order 10927. There is also logic to the direct vs. indirect services distinction. The difficulty is that the Manual does not define either of these criteria with the specificity required by the Court. It is clear the Court has not excluded these as criteria, but has excluded these criteria as presently defined. The Court held: "what the Court has determined here—and all it has determined—is that the 'direct services' requirement, as presently employed, does not have the precision necessary

to comport with constitutional requirements" (page 8, line 12).

Nonetheless, since nothing has been done since the Court case to define these criteria more precisely, I conclude that these agencies must be allowed to participate in the present campaign. These questions, however, are among those that will be reviewed for the next campaign.

The second difficult decision involves Planned Parenthood-World Population (PP/WP). Serious procedural questions have been raised regarding the eligibility of this agency. (1) A question is raised whether the 12 percent of funds raised directly from the public is sufficient to represent the Manual Section 5.21 requirement for participation in the CFC based upon broad support from the general public. This low percentage raised from direct contributions does seem too low to demonstrate this support. Yet, I do not find the standards precise enough on this matter. (2) Questions were raised before the Eligibility Committee regarding whether this agency meets the Section 5.21 provision that "such services must be consistent with policies of the United States Government." Not all of the facts are clear here, but it is relevant to note that in a letter of April 13, 1981, Planned Parenthood-World Population stipulated that it does not purchase, nor permit its grantees to purchase, Depo-Provera as claimed in testimony before the Eligibility Committee. PP/WP also has stipulated that no funds "currently being used . . . provide abortion services in our international program." (3) Questions were also raised whether the agency meets the Section 5.24 criterion that "it has earned good will and acceptability throughout the United States." Evidence was presented showing material derogatory to one religious group. It should be noted, however, that the material was distributed by the Planned Parenthood Association in Chicago and not Planned Parenthood-World Population, the group under consideration here. (4) The Eligibility Committee declared that the accounting standards used by PP/WP are only "substantially" in accord with the standards in the Manual. This agency, however is not unique in failing fully to meet these standards. (5) Therefore, I find that Planned Parenthood-World

Population should not be excluded from the campaign, since the Manual standards lack First Amendment precision, and/or that the facts presented are in doubt.

The agencies covered by this Section, consequently, are given admission to this CFC campaign, as well as all other agencies which have submitted applications, other than those listed in Section V. above. The recognized campaigns and agencies are listed on the covering memorandum.

VII. SUMMARY

The general public naturally is concerned about the lack of precision in the standards of the current Manual, and the resulting looseness of eligibility criteria in the 1981-82 Combined Federal Campaign. As a partial protection of the "government interest," some very broad restrictions are applied in Section V. Yet, the general rule for the 1981-82 CFC, is that most agencies will be admitted to the CFC and that all admitted agencies will be eligible for designated funds.

For the 1982-83 campaign, the public may be assured that adequate standards will be promulgated, in appropriate regulatory format, and that the resulting eligibility criteria will be precise enough to respect both First Amendment rights and the "legitimate government interest."

/S/ Donald J. Devine
DONALD J. DEVINE
Director

DATE: JUNE 9, 1981

EXHIBIT C, RALSTON AFF.; C.A. NO. 83-

USO WORLD HEADQUARTERS
1146 19th St., N.W.,
Washington, D.C. 20036 (202) 862-0700

October 2, 1981

Hon. Donald J. Devine, Director
Office of Personnel Management
Washington, D.C. 20415

Dear Mr. Devine:

As chairperson of the National Service Agencies I am pleased to have this opportunity to submit NSA's recommendations for the proposed modifications of the Manual, pursuant to the conversation between you and your staff and a Committee of NSA Agencies on July 7, 1981. This letter will summarize the position of the NSA group. Enclosed is a detailed memorandum giving the background for our proposals and supporting arguments and information.

Our proposals are based on a number of principles:

First, any standards for the inclusion of organizations in the Combined Federal Campaign must comport with constitutional requirements. Thus, they must be clear and specific and give guidance to officials at whatever level who are making decisions with regard to a particular organization.

Second, they must be drafted in light of the overriding requirement of the First Amendment that an organization not be judged on the basis of the content of its appeal or the nature of its program.

Third, the standards must relate to the legitimate governmental interest in regulating the time, place, and manner of charitable appeals and to legitimate administrative concerns.

Fourth, the regulations must be politically neutral so that federal employees are free to exercise their own judgment as to what organizations deserve their support uncontrolled by any screening of programs that government officials may or may not believe are worthy.

Fifth, in accord with the Administration's principles governing all regulations, the Manual must be as straightforward and simple as possible in order to save the time and energy of all concerned, both staff of charitable organizations and the personnel administering the Combined Federal Campaign.

As a result of our experience with the campaign, particularly as it relates to applications to local CFC's, we believe the existing Manual meets virtually none of these above requirements. It is overly complex and overly regulatory. Its standards are vague and confused, thus resulting in arbitrary and diverse decisions at the local level. Its criteria favor some types of charitable organizations over others on grounds unrelated to any legitimate government interest. In general it results in the wholly unnecessary expenditure of a great deal of time, effort, and money that could better be directed towards effective fund raising.

We propose that the entire Manual be rewritten along the following lines. There should be *two* general categories of organizations, locally based and oriented agencies, and national/international agencies. Local (or state-wide) agenices will still be required to apply to local Federal Coordinating Groups and meet constitutionally appropriate criteria for inclusion in a particular locality. Thus, we have no quarrel with the general proposition that, for example, an organization that serves the San Francisco area only should not be on the list of agencies in the Chicago area, or vice versa.

The second category are those organizations whose programs are not oriented towards a particular locality, but rather are national in scope or have as their purpose providing charitable services abroad. With regard to such agencies it seems to us totally irrational to condition their inclusion in a local CFC on whether their services are carried out in particular localities. The nature of their programs is to benefit either American society as a whole or to direct the largesse of that society to poorer countries. Therefore, they should be able to appeal to all employees and military personnel of the federal government regardless of where they may reside or work.

The definition of international agencies is straightforward and should provide no particular problem. We suggest in the accompanying memorandum a definition of national agencies which would include within its scope both the national health agencies and the national service agencies. Basically, the term would include any agency whose purpose is to benefit a class of persons regardless of locality, or whose purpose is to attack a particular problem or issue that affects persons nation-wide or in a large area of the country. Both the "direct services" and the "substantial services" requirements are eliminated. They are too vague and undefinable, and they focus on the nature of an organization's program. The manual would require that any national/international agency which applies to OPM and meets these carefully drawn criteria will be admitted to the Combined Federal Campaign and will be listed in the brochures distributed by all local CFC's (unless the agency is already a participating agency in the local United Way). In this way agencies will be spared the burden of applying at both the national and local levels, and the local CFC's will be spared the burden of attempting to apply undefined criteria to many different agencies.

With regard to undesignated funds, we urge first that the category be eliminated and that all contributions be by designation. Failing that, it must be mandated that all groups will share in undesignated funds based on the percentage of designations they receive by locality. There are a number of possible forms this could take; for example, a federal employee could have the options of designating a particular agency, of designating local agencies or national/international agencies, or of not designating at all.

We also urge that contribution leaflets and pledge cards be standardized so that all federal employees receive the same basic information. Finally, we recommend that OPM adopt the recommendations of the General Accounting Office relating to the establishment of central receipt points for funds, requiring a "hands-off" policy by participating agencies, and regarding audits of funds.

In summary, our proposal would have the advantage of maintaining local autonomy where it is relevant, i.e., with

regard to the admission of local agencies, while ensuring uniformity and standardized decisions with regard to those agencies whose programs are not locally oriented. We would appreciate the opportunity of discussing our proposals with you and your staff as well as being informed of any proposals of other organizations or groups so that we may comment on them.

Thank you very much for your consideration of this matter.

Cordially,

/s/ Eugene J. Brennan
EUGENE J. BRENNAN
Chairperson
National Service Agencies

Enclosure

CC: Mr. Joseph S. Patti
Assistant to the Director

MEMORANDUM

October 1, 1981

TO: Hon. Donald Devine, Director
Office of Personnel Management

FROM: National Service Agencies

RE: Revisions in the Manual for Fundraising in the Federal Service.

Decisions of the Supreme Court have long made it abundantly clear that charitable solicitation is protected by the First Amendment. It is therefore subject only to reasonable regulations related to legitimate governmental interests such as the time, place, and manner of solicitation and prevention of fraud or unwarranted invasions of privacy. See, *Village of Schaumburg* v. *Citizens for A Better Environment*, 444 U.S. 620 (1980).*

Regulations may not be related to the content of an organization's appeal or the nature of its program. Thus, in *Village of Schaumburg* v. *Citizens for a Better Environment, supra*, the specific requirement involved, *i.e.*, a 25% limit on fund raising and administrative expenses, was struck down because it discriminated against certain types of charitable organizations as opposed to the more traditional kind. Further, limitations or regulations of charitable activities must, in common with all other limitations on First Amendment activities, be based on clearly defined criteria and rules to prevent the arbitrary exclusion of some groups and the favoring of others. *Heffron* v. *Int'l*

*In its most recent decision dealing with charitable solicitation the Supreme Court upheld time, place and manner regulations that were applied evenhandedly to all organizations, while making it clear that differences in treatment based on the nature of the organization or the content of its apeal were not permitted by the First Amendment. *Heffron* v. *Int'l Soc. for Krishna Consc.*, ___ U.S. ___, 69 L.Ed.2d 298, 306-07 (1981).

Soc. for Krishna Consc., ___ U.S. ___, 69 L.Ed.2d 298, 307 (1981).*

In two recent decisions these principles have been applied to the Combined Federal Campaign, and portions of the Manual have been held invalid as violative of the First Amendment. *National Black United Fund* v. *Campbell*, 494 F. Supp. 748 (D.D.C. 1980); *NAACP Legal Defense and Educational Fund, et al.* v. *Campbell*, 504 F. Supp. 1365 (D.D.C. 1981).* In *NAACP Legal Defense and Educational Fund* v. *Campbell*, Judge Gesell strongly urged that those responsible for the Combined Federal Campaign set about revising its provisions to bring it into full compliance with First Amendment requirements, so that legal challenges would not result in its destruction.

There is no question but that the Combined Federal Campaign is a worthy enterprise which should be continued with full vigor, and the NSA group members fully support its continuation. However, they are also united in their concern that it be structured in a way consistent with the Constitution and that it give federal employees the opportunity to select freely for themselves those types of charitable efforts that they believe worthy of support. Paternalism has no place in the Combined Federal Campaign. Federal em-

**Heffron* is worth quoting at some length since it highlights precisely what is wrong with the present Manual:

> A major criterion for a valid time, place, and manner restriction is that the restriction "may not be based upon either the content or subject matter of the speech".... [The rule] qualifies in this respect, since ... the Rule applies evenhandedly to all who wish to distribute and sell written materials or to solicit funds.
>
> * * *
>
> Nor does [the] Rule ... suffer from the more covert forms of discrimination that may result when arbitrary discretion is vested in some governmental authority. The method of allocating space is a straightforward first-come, first-served system. The Rule is not open to the kind of arbitrary application that this Court has condemned as inherently inconsistent with a valid time, place, and manner regulation because such discretion has the potential for becoming a means of suppressing a particular point of view.

69 L.Ed. at 307.

*The United States has acquiesed in both decisions by declining to appeal either, and therefore is fully bound by them.

ployees are fully capable of making an informed choice between different types of charitable appeals and do not need government officials, however well meaning, to decide in the first instance which are "good" or "worthy" charities.

The basic problem with the rules and regulations governing the CFC as embodied in the present Manual is that they are based on the false assumption that there are some charities that are better than others, and that the government is qualified to decide which they are. The Manual is strongly biased in favor of what might be termed "traditional" charities which, while worthy in their aims and activities, do not have the only answer to the best way to assist those in need. Thus, the Manual suffers from precisely the same underlying defect as did the ordinance struck down in *Village of Schaumburg*. Its revision is essential, and any revisions must result in scrupulously avoiding any rules or restrictions which would favor or disfavor any charity based on preconceived motions as to what is a "good" charity.

As noted above, the courts have addressed themselves to particular parts of the Manual and have found them deficient. In the *NBUF* case the court struck down a number of provisions which inhibited new organizations with new orientations from coming into the CFC. In the *NAACPLDF-PRLDEF* case the court held that one of the crucial provisions in the manual, the so-called "direct services rule," was fatally flawed because of its vagueness and capacity for arbitrary application. As a result of these decisions a number of organizations were admitted for the first time into the CFC and placed in the National Service Agencies group. They were, however, also required to apply to each of more than 550 local CFC's.

Their admission at the local level was judged on whether they provided "substantial services" in the local community, a criterion as equally undefined as was the "direct services" rule, and one subject to abuse and arbitrary application. The experiences of NSA group members are both illustrative and instructive. A number of agencies applied to all of the local CFC's with extremely mixed results. In a significant number, agencies were rejected on the ground of local deadlines which have been arbitrarily set in total disregard of explicit guidance from OPM. A number of local

CFC's requested further information relating to what agencies did in their localities, sometimes telephonically, sometimes by letter. Some of their concerns were met by the guidance in OPM's CFC Memo No. 5. In particular, with a few exceptions, agencies ceased getting requests that there be a local phone number or contact person.

A number of local CFC's took the wholly reasonable view that once an NSA agency was admitted by OPM, it was automatically admitted in their locality. A number of others, when informed of an agency's program, either on a national basis or with regard to the particular regior., were satisfied.

A substantial number of locals, however, rejected organizations either out of hand without seeking further information, or after they had responded to their questions. Most rejections were on the ground that there was no evidence that agencies did anything at the local level, completely ignoring demonstrations that, for example, lawsuits had benefited all federal employees nationwide, and therefore necessarily benefited persons in their community. Others based their rejections on rules that either had been superseded by OPM's recent memos, were no longer part of the manual, or that were of their own invention. Some of the reasons were: (1) some other unnamed organization already provided similar services; (2) the application was not signed in the original; (3) local media had never heard of the agency; (4) the local United Way had never heard of it; (5) the agency was not registered with the state as authorized to conduct charitable solicitations (sometimes it was, sometimes it wasn't); (6) the agency was required to fill out a lengthy form (most refused to do so); (7) etc. Attached to this memo are representative letters both accepting and rejecting two of the NSA agencies. It is obvious from a reading of them that decisions are being made based on rules that are (1) non-existent; (2) arbitrary; (3) illegal; and (4) generally unconstitutional.*

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*The most outrageous turndown was from Charleston, South Carolina, which telephonically informed the NAACP Legal Defense Fund that it was decided to reject *all* NSA groups because their being on the list last year had resulted in donations going down.

The basic problem with the system as set up now lies in the requirement that nationally oriented organizations apply to individual Combined Federal Campaigns. This requirement is totally irrational and related to no legitimate government interest that is even remotely discernible. Clearly, a local CFC may rationally limit involvement of charitable organizations that are oriented towards another locality. Thus, we have no quarrel whatsoever with, for example, the Chicago CFC not admitting an agency whose services or programs are restricted to the San Francisco Bay area. This restriction makes no sense, however, with regard to national organizations, and indeed does not apply now to international service agencies.

We propose, therefore that there be two main categories of organizations. The first would consist of local groups (which probably should be defined to include groups that are state-wide). The second category would be national/international agencies, that is, those agencies which are not oriented to a particular locality but rather have programs dealing with a variety of issues that are larger in scope, both geographically and in terms of subject matter.

International agencies would include those organizations which conduct programs designed to benefit the needy in other countries, such as CARE, the Pearl S. Buck Foundation, et cetera. National agencies would include a variety of organizations whose purpose is to address a particular problem or issue that affects persons regardless of their locality, or whose purpose is to benefit a class of persons. Examples would be the American Cancer Society, whose purpose is to eradicate cancer whomever it might effect; civil rights organizations, whose purpose is to achieve equality and justice for particular segments of the society regardless of locality; resource agencies, such as the American Foundation for the Blind, whose purpose is to provide back-up assistance to local agencies dealing with the blind; agencies such as United Service Organizations, the United Seamen's Service, and the American Red Cross, whose purpose is to provide assistance and benefits to various groups.

The criteria for deciding the admissibility of agencies in the international/national category should be straightforward and clear, since their purpose is not to judge the nature of the program, but rather to determine whether an agency will be required to apply to local CFC's. Thus, the criteria will be oriented towards a procedural rather than a substantive question. Suggested criteria (which need not be exclusive) would be; is the organization's program directed towards persons in other countries; are the organizations' programs carried out outside the United States; do the programs have an orientation that extends beyond the limits of a single state; is the purpose of the organization to benefit a class of persons, *e.g.*, Blacks, Hispanics, women, et cetera, regardless of the particular geographical locality of the individuals involved; is the organization's program designed to address a health or economic problem affecting the population generally, such as cancer, blindness, heart disease, or unemployment. If these criteria are met, and if the organization is IRS approved, then the agency will be approved by OPM as an international/national agency and will appear in the campaign brochures of all CFC's, whether national or overseas.

The proposed revisions have a number of advantages. *First*, they are simple since they establish criteria readily administered at one level. It will no longer be necessary for national organization to apply to OPM and then to more than 550 local agencies, and local agencies will no longer have the burden of judging (or rejudging) whether a national organization should be admitted under vague criteria. *Second*, the manual would be constitutional since it would not involve the judging of an organization on the basis of the nature of its program, except with regard to a procedural matter related to the time, place and manner of solicitation. *Third*, the system is fair since it allows all *bona fide* charitable agencies equal access to federal employees, and allows federal employees to chose freely among a variety of different types of agencies. *This* CFC would relieve agencies of unnecessary and time consuming applications, would relieve local CFC's of an unwarranted

burden, and would relieve OPM of the necessity of defending an endless series of indefensible lawsuits.

Finally, the NSA agencies strongly urge that the category of undesignated funds be eliminated in its entirety. As presently constituted the system unfairly disadvantages organizations based on no rational or legitimate governmental interest. Again, federal employees are perfectly capable of deciding the manner in which they wish their dollars to be allocated. If the principle of undesignated funds is retained, the persent discretion for dividing them should be removed from local CFC's because it permits unwarranted and arbitrary decisions. The Manual should provide that an employee may designate any single agency, may designate any category of agencies, e.g., local, national, international, etc., or may simply give money to the CFC generally. The division of undesignated moneys would be based solely on the basis of that year's proportion of designated funds a group has received at the local level.

EXHIBIT D, RALSTON AFF.; C.A. No. 83-

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

October 22, 1981

TO: The Honorable David A. Stockman
Director
Office of Management and Budget

FROM: Donald J. Devine
Director

SUBJECT: Proposed New Executive Order for the Combined Federal Campaign

Attached is a proposed Executive Order, *Directing the Director of the United States Office of Personnel Management to Provide for the Conduct of Fund Raising Activities Within the Federal Establishment In Support of Voluntary Health and Welfare Organizations* (Attachment A). I am requesting that this proposed Executive Order be approved from the standpoint of the Administration's program. Because time for approval is short before we have to begin preparations for the 1982-83 Combined Federal Campaign, I have transmitted the proposed Executive Order and the attached material directly to the Attorney General for his consideration as to form and legality.

BACKGROUND

It has been long-standing policy of the Federal Government to cooperate with and assist voluntary health and welfare agencies in soliciting funds for worthy causes from Federal personnel.

At one time, the increasing number of fund drives began to create an intolerable administrative burden for Federal officials. They were beseiged by dozens of agencies seeking endorsements and the privilege of soliciting employees on the job. In addition, employees were confused by the multiplicity of appeals—as many as 10 to 20 a year in some departments.

After extensive study of the situation, a uniform program (now known as the Combined Federal Campaign) was established in 1956 to limit the number of campaigns and to insure true voluntary giving by Federal personnel. The program was originally monitored by the *President's Committee on Fund Raising Within the Federal Service.* The Committee was later abolished and its functions assigned to the Chairman, U.S. Civil Service Commission (now Director, Office of Personnel Management), by Executive Order 10927 of March 18, 1961. (Attachment B)

From its inception the Combined Federal Campaign was intended to be, and has been, limited by regulation to health and welfare organizations that also meet certain other prescribed eligibility criteria. The health and welfare limitation has clearly served the public interest; however, developing constitutional doctrine, as formulated by the Courts, makes the limitation highly vulnerable to legal challenge in that Executive Order 10927 does not explicitly direct such limitation. The only applicable direction the Executive Order contains is that:

> "* * *The Chairman of the Civil Service Commission (now, Director, Office of Personnel Management) shall make arrangements for such national voluntary health and welfare agencies and *such other national voluntary agencies as may be appropriate* to solicit funds from Federal employees and members of the armed forces at their places of employment or duty stations* * *" (emphasis supplied).

If the "health and welfare" limitation now imposed by regulation were to be struck down by the Courts as impermissibly restrictive of the language of Executive Order 10927, it could create an intolerable administrative burden on local Federal officials and severely affect the viability of the voluntary agencies participating in the Combined Federal Campaign that undertake to meet common human needs of the community in the areas of health and welfare. The demands upon such agencies already far exceed the resources available and will be even greater as Federal funds for some health and welfare programs are reduced or possibly eliminated in some program areas.

A further problem is created by the omission of any prescribed eligibility criteria in Executive Order 10927 other than as stated above. Some groups that have not been able to meet the eligibility standards set forth by the Office of the Director, Office of Personnel Management, in its regulations *(Manual on Fund Raising Within the Federal Service for Voluntary Health and Welfare Agencies)*, have attacked those standards in the Courts.

In NAACP Legal Defense and Education Fund v. *Campbell*, Civ. Action No. 80-1888 (D.D.C., filed January, 1981), the U.S. District Court refused to enforce the criterion that a charitable organization must provide "direct services" to people in order to qualify (rather than undertaking litigative advocacy) because the providing of "direct service" is not required by Executive Order 10927 and, as presently employed, lacks the necessary precision to guide the Director of the Office of Personnel Management in deciding what organizations should be approved for participation in the Combined Federal Campaign. (See Attachment C; CFC Memorandum 81-2.)

It should also be observed that in the *NAACP* case, the Court recognized that the imprecision of the existing eligibility criteria threatened the entire Federal employee contribution program. The Court noted that:

> "It behooves the government officials responsible for the program to re-examine the basic premises on which the program was established so that more acceptable standards can be developed which will assure continuation of the government's significant and useful support for worthy charitable solicitation."

Unless the deficiencies in Executive Order 10927 are corrected, the inevitable result will be mandatory admission to the Combined Federal Campaign of a multitude of organizations whose programs, whatever their benefit in other ways, are considered less critical to the national interest than those directed at common human needs in the areas of health and welfare. Furnishing Federal administrative effort and indirect support to obtain contributions for programs of lower priority would clearly conflict with the

thrust of the President's budget decisions to accord priority of Federal support to vital health and welfare programs.

PURPOSE OF THE PROPOSED EXECUTIVE ORDER

The purpose of the proposed Executive Order is to restate the legitimate government interest in establishing the Combined Federal Campaign; to prescribe necessary eligibility standards for participation in the Federal Campaign that are consistent with the legitimate government interest; and to set forth such standards with the precision necessary to meet constitutional requirements when the government restricts First Amendment activities. The proposed Executive Order would also revoke and replace Executive Order 10927 of March 18, 1961.

A summary of the salient features of the proposed Executive Order is as follows:

Section 1 sets forth the legitimate government interest in establishing the fund-raising program (Combined Federal Campaign) and for limiting participation therein to eligible voluntary health and welfare organizations. No similar provision is contained in Executive Order 10927.

Section 2 defines a number of terms used in the Executive Order. In Section 3 the term "eligible voluntary health and welfare organization" is defined. This Section specifies with necessary precision the standards that must be met by an organization to be approved for participation in the Combined Federal Campaign. No similar provision is contained in Executive Order 10927.

Section 4 charges the Director of the Office of Personnel Management to make arrangements for "eligible voluntary health and welfare organizatons" to solicit funds from Federal employees and members of the uniformed services at their places of employment or duty stations. A similar provision is contained in Executive Order 10927; however, the qualifying word "eligible" does not appear in the latter Order.

Section 5 provides that federated organizations that meet the eligibility criteria specified in the Order may participate in the Federal fund-raising program. No similar provision is contained in Executive Order 10927; however, such

participation is appropriate, has been permitted since the inception of the Combined Federal Campaign, and should be recognized in the Executive Order.

Section 6 authorizes the Director of the Office of Personnel Management, in making the arrangements required by the Order, to consult with interested persons and organizations and with the executive departments and agencies concerned. It requires that such arrangements permit true voluntary giving and provide for confidentiality of such gifts; requires designation of the period in which charitable solicitations may be conducted; and permits not more than *one* solicitation annually, except in the case of emergency, disaster appeals, or special local circumstances for which specific provision may be made by the Director of the Office of Personnel Management. A similar provision is contained in Executive Order 10927; however, the latter Order permits not more than *three* solicitations annually, apart from emergency or disaster appeals.

Section 7 requires that the form(s) used for solicitation of funds clearly identify the eligible agencies and provide a direct means to allocate funds to such agencies. It further requires that contributors be given prominent notice on such form(s) that a decision by a contributor not to allocate funds to specified agencies shall be deemed a decision to have such funds allocated by the principal combined fund organization. Section 7 further provides that the principal combined fund organization will manage, administer, and allocate undesignated funds for each local Combined Federal Campaign, subject to the direction and control of the Director of the Office of Personnel Management. Criteria to determine the principal combined fund organization are required to be specified by the Director of the Office of Personnel Management. No similar provisions are contained in Executive Order 10927.

Section 8 provides explicitly for participation in the Federal fundraising program of eligible international service agencies. No similar provision is contained in Executive Order 10927; however, such participation is appropriate, has been permitted since the inception of the Combined Fed-

eral Campaign, and should be recognized in the Executive Order.

Section 9 provides that the Order shall not apply to solicitations conducted by organizations composed of civilian employees or members of the uniformed services among their own members for organizational support or for benefit or welfare funds for their members. A similar provision is contained in Executive Order 10927.

Section 10 directs the Director of the Office of Personnel Management to prescribe such rules and regulations as may be necessary to implement the Executive Order. No similar provision is contained in Executive Order 10927; however, such authority is considered present by necessary implication.

Section 11 revokes Executive Order 10927 of March 18, 1961.

In further amplification of the purpose and intent of the proposed Executive Order, it should be noted that of the eligibility criteria set out in Section 3 of the proposed Order, most are substantially the same as those presently required in existing regulations of the Office of Personnel Management implementing Executive Order 10927.

Of the "new" eligibility criteria, one would provide for the first time a long-needed, precise definition of "health and welfare services" (Section 3(a)). Also provided for the first time is an objective standard for determining whether an agency provides "direct and substantial" services to individuals (Section 3(c)).

The other new eligibility criteria are that the agency be one that is "nonpolitical," as defined in the Order (Section 3(g)).

The requirement in Section 7(b) of the proposed Order—that at each local Combined Federal Campaign (there are some 545 such locations) a "principal combined fund organization" be designated to perform the functions specified would simplify the present unduly complex (but long-standing) arrangements for conduct of local campaigns, would substantially reduce the time required of the local Federal officials in effecting campaign arrangements, and would facilitate a more effective campaign within the poli-

cies and procedures to be prescribed in implementing regulations.

BUDGETARY IMPLICATIONS

There are no increased budgetary requirements associated with the proposed Executive Order. Some indirect economies may reasonably be anticipated in terms of reducing the time required of the local Federal officials to arrange for, and supervise, the conduct of local Combined Federal Campaigns in their respective areas.

TIMING

Applications for eligibility for the 1982-83 Campaigns originally were due December 1, 1981. We have delayed this to a last-date deadline of February 1, 1981.

CONCLUSION

As President Reagan said in his recent memorandum on the Combined Federal Campaign, "Through voluntary giving, we prove that individuals can do on their own without having to go through government channels" (Attachment D). This is particularly true at a time when the imperative of revitalizing the private sector of the economy necessitates some retrenchment in Federal expenditures. These cutbacks in social assistance programs can be partially, even if modestly, offset by the efforts of private, voluntary health and welfare organizations aided by the support derived through the Combined Federal Campaign. The proposed Executive Order is urgently required if the Combined Federal Campaign is to continue to fulfill its intended purpose.

EXECUTIVE ORDER

DIRECTING THE DIRECTOR OF THE UNITED STATES OFFICE OF PERSONNEL MANAGEMENT TO PROVIDE FOR THE CONDUCT OF FUND RAISING ACTIVITIES WITHIN THE FEDERAL ESTABLISHMENT IN SUPPORT OF VOLUNTARY HEALTH AND WELFARE ORGANIZATIONS

By the authority vested in me as President of the United States, it is ordered as follows:

Section 1.(a) I have determined that it is in the national interest for the Federal Government to support and facilitate fund-raising from Federal employees and members of the uniformed services on behalf of voluntary organizations that undertake programs to meet common human needs of the community in the areas of health and welfare.

(b) In order that such fund-raising not unduly interfere with the efficient operation of government; in order to avoid confusion to employees in, and inconvenience in the administration of, such fund-raising arising from the absence of limits defining those voluntary organizations eligible to participate; and in order to insure that the recipient organizations of the funds so raised are responsible in their uses of those monies; authority is hereby vested in the Director of the United States Office of Personnel Management to encourage, arrange for, conduct, and supervise such fund-raising, to be known as the Combined Federal Campaign.

Section 2. The following definitions shall apply to terms used in this Executive Order:

(a) "Director" shall mean the Director of the United States Office of Personnel Management, or his delegate.

(b) "Employee" shall mean any person employed by the Government of the United States or any branch, unit, or instrumentality thereof, including persons in the civil service and in the uniformed services.

(c) "Combined Federal Campaign" shall mean the fund-raising program established and administered by the Director pursuant to this Executive Order, and any subsidiary units of such program.

(d) "Community" shall mean a community that is defined either by generally-recognized geographic bounds or by its relationship to an isolated government installation.

(e) "Direct Contributions" shall mean gifts, in cash or in donated material, given by individuals and/or other non-governmental sources directly to the spending health and welfare organizations.

(f) "Indirect Contributions" shall mean gifts, in cash or in donated material, given to the spending health and welfare organization by another health and welfare organization that satisfies the criteria set forth in Section 3(b) of this Executive Order.

Section 3. As used in this Order, the term "eligible voluntary health and welfare organizations" shall mean an organization:

(a) that actively conducts health or welfare programs and provides services to individuals directed at one or more of the following common human needs within a community: service, research, and education in the health field; family and child care services; protective services for children and adults; services for children and adults in foster care; services related to management and maintenance of the home; day care services for adults; transportation services; information, referral, and counseling services; the preparation and delivery of meals; adoption services; emergency shelter care and relief services; safety services; neighborhood and community organization services; recreation services; social adjustment and rehabilitation services; health support services; or a combination of services enumerated in this Order designed to meet the special needs of specific groups, such as children and youth, the aged, the ill and infirm, and the physically handicapped;

(b) that is voluntary and broadly supported by the public, meaning that it is organized as a not-for-profit corporation or association under the laws of the United States, a state, a territory, or the District of Columbia; it is classified as tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended; and it has received in

the year immediately preceding any year in which it seeks to participate in the Combined Federal Campaign at least one-half (50 percent) of its revenues from non-governmental sources, or at least one-fifth (20 percent) of its revenues from direct and/or indirect contributions;

(c) that provides direct and substantial services to individuals residing in the geographic area in which personnel are solicited, which shall be evidenced by the expenditure for such services of at least one-third (33⅓ percent) of the funds received by the recipient organization from its solicitation of Federal personnel in that geographic area;

(d) that is directed by an active board of directors, a majority of whose members serve without compensation; that adopts and employs the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations;* that prepares and makes available to the general public an annual financial report prepared in accordance with the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations* and certified by an independent certified public accountant; that provides for an annual external audit by an independent certified public accountant;

(e) that can demonstrate to the Director, if its fundraising and administrative expense is in excess of 25 percent of total support and revenue, that its actual expense for those purposes is reasonable under all the circumstances in its case;

(f) that ensures that its publicity and promotional activities are based upon its actual program and operations, are truthful and nondeceptive, and include all material facts;

(g) that is non-political, meaning that it does not seek to influence the outcomes of elections or the determination of public policy by contributing to or endorsing any candidate for public office or any side of any question put to a referendum, by lobbying any legislative body, or by litigating public policy in any court on behalf of any person other than itself, or by contributing to any other organization which carries on any of the activities proscribed in this subsection;

(h) that files with the Director such special reports as the Director, in his discretion, may require in implementing this Order.

Section 4. In establishing the Combined Federal Campaign, the Director shall make arrangements for eligible voluntary health and welfare organizations to solicit funds from Federal employees and members of the uniformed services of the United States at their places of employment or duty stations. A Combined Federal Campaign at the place of business serves the government interest of effective operation of government installations by limiting the number and manner of solicitations of government employees.

Section 5. Federated, non-sectarian, non-political charitable organizations within a community whose participating members are health and welfare agencies that meet the eligibility criteria specified in Section 3 of this Executive Order and that normally solicit funds as such federation from the general public shall be eligible under this Order to solicit funds from Federal personnel on behalf of their participating agencies, subject to such rules and regulations as the Director may prescribe.

Section 6. In making the arrangements required by section 1 of this Order, the Director is authorized to consult with appropriate interested persons and organizations and with the executive departments and agencies concerned. Such arrangements shall:

(a) Permit true voluntary giving and reserve to the individual contributor the option of disclosing his gift or keeping it confidential;

(b) Designate the times in which such charitable solicitations may be conducted;

(c) Provide for not more than one solicitation annually, except in the case of emergency, disaster appeals, or special local circumstances for which specific provision may be made by the Director.

Section 7. (a) The form(s) used for solicitation of funds shall clearly specify the eligible agencies and provide a direct means to allocate funds to such agencies. Potential contributors shall be given prominent notice on such form(s)

that a decision by a contributor not to allocate funds to specified agencies shall be deemed a decision to have such funds allocated by the principal combined fund organizations.

(b) A principal combined fund organization shall manage, administer, and allocate undesignated funds for each local Combined Federal Campaign, subject to the direction and control of the Director. The Director shall specify criteria to determine the principal combined fund organization in each combined fund drive area.

Section 8. International agencies that provide health or welfare services overseas, which otherwise meet the eligibility criteria specified in this Executive Order except for Section 3(c), and whose programs and services are consistent with the policies of the United States Government, shall be eligible under this Order to solicit funds from Federal personnel, subject to such rules and regulations as the Director may prescribe.

Section 9. This Executive Order shall not apply to solicitations conducted by organizations composed of civilian employees or members of the uniformed services among their own members for organizational support or for benefit or welfare funds for their members. Such solicitations shall be conducted under policies and procedures approved by the head of the department or agency concerned.

Section 10. The Director shall prescribe such rules and regulations as may be necessary to implement this Order.

Section 11. Executive Order No. 10927 of March 18, 1961, is hereby revoked.

THE WHITE HOUSE 1981

THE WHITE HOUSE
WASHINGTON

July 2, 1981

MEMORANDUM FOR ALL FEDERAL EMPLOYEES AND MILITARY PERSONNEL

We each have the opportunity to show our concern for those in need through the Combined Federal Campaign. It combines the annual fundraising efforts of the United Way, the National Health Agencies, the International Service Agencies, the National Service Agencies, local non-federated voluntary agencies and the American Red Cross.

Through voluntary giving, we prove what individuals can do on their own without having to go through government channels. We have the opportunity to provide services and programs for our neighbors and countrymen without making them dependent on government. The CFC also makes it possible to help those in faraway lands, extending a helping hand to friends around the world. We can help relieve pain and problems now and fund research to keep them out of our future.

In America, we have traditionally accepted the responsibility of voluntary giving for good causes. The values that cause us to care for our neighbors, our countrymen and people around the world are the values that make us great.

Federal Employees and military personnel have a proud record of generosity and concern for others. I am confident that record will continue this year. While the amount you give is a personal, voluntary decision, I hope that each of you will join me in supporting the Combined Federal Campaign.

RONALD REAGAN

EXHIBIT E, RALSTON AFF.; C.A. NO. 83-

For immediate release
Friday, July 2, 1982

Contact:
Patrick Korten

OPM ISSUES FINAL RULES OFFERING WIDE CHOICE, FULL DESIGNATION FOR COMBINED FEDERAL CAMPAIGN

(WASHINGTON, D.C.)—Final regulations governing the Combined Federal Campaign, the government's charity drive for private voluntary organizations, today were submitted for publication in the Federal Register by the U.S. Office of Personnel Management. OPM Director Donald J. Devine noted that a number of changes were made, following careful consideration of more than 6,500 comments which were submitted following the publication of proposed regulations on May 11, 1982. Devine said that the final version of the new rules "create the most equitable system for all parties concerned: Federal employees and members of the Armed Forces, the charities, the recipients of the charities' services, and the general public."

The OPM Director noted that in addition to considering the thousands of written comments which were received, he personally met with representatives from all of the national voluntary groups in the campaign and 15 charitable agencies, in some cases more than once. Devine said that most of those submitting comments (70%) were supportive of the proposed new regulations, with another 7% supporting them but with specific suggestions for modifications.

The regulations establish a framework in which Federal employees will have a wide choice of charitable agencies to which they may contribute, and will be encouraged to earmark their contributions for specific charities, rather than make an undesignated gift which is then distributed among many participating organizations.

Director Devine called the final rules "fair, precise and objective," and said they would "greatly enhance a charity drive in which Federal employees have shown themselves to be extraordinarily generous, in contributing millions of

dollars to charities serving the needy throughout the United States and all over the world."

Devine said that the new regulations "will result in a Campaign which offers Federal employees a wide choice of charities to select, and will encourage them to make their contributions in a very personal way, by carefully selecting the individual charities they'd like to benefit."

With regard to objections raised by some respondents, Devine noted that most of them centered on four issues: designation of a local Principal Combined Fund Organization (PCFO), distribution of undesignated contributions, the purported difficulty that some charities serving minorities and women would have in qualifying for participation, and the end of participation of local unaffiliated charities after the fall 1982 campaign.

The final CFC regulations reflect OPM's belief that the designation of local Principal Combined Fund Organizations will strengthen the administration, "because of the expertise of these already-existing federated fund-raising organizations." In addition, Devine said that the arrangement will reduce what is now a substantial administrative cost to the government. However, he added that some specific changes have been made in the rules governing PCFOs, based on the comments received, and involve strengthening the direction and control over PCFOs by local Federal Coordinating Committees.

Director Devine noted that "the distribution of undesignated contributions has been one of the major sources of controversy with the CFC since its inception." Over the years, various methods and formulas have been used in attempts to insure their equitable distribution. None have stilled the controversy over the methods or forestalled legal action to overturn them."

The new regulations, Devine pointed out, place the responsibility for deciding where the funds will go with the employee-contributor. Employees are strongly encouraged to make a specific designation, and are clearly notified that "a decision not to do so is a rational choice to have the contributions allocated by the PCFO—an organization made up of representatives of his or her local community, experi-

enced in evaluating needs and allocating scarce charitable contributions."

Another matter concerning undesignated funds is clarified in the final regulations: these funds may be distributed to international service and other agencies, and are not restricted to organizations that serve localities only. Devine noted that this was the intention throughout, and that the clarifying language was inserted in response to concerns that this be made explicit.

The third general objection to the proposed regulations, that the eligibility of legal defense, minority and women's organizations was in doubt, resulted in changes in the original language. "OPM is persuaded that some of the earlier criteria were overly restrictive and has modified both the general eligibility requirements and the direct and substantial presence criterion to meet most of the germane objections," Devine said.

The OPM Director made clear that the agency would retain the earlier decision that local unaffiliated charities would be ineligible for participation on their own after the fall, 1982 campaign. He noted, however, that the final regulations "permit local unaffiliated organizations one year of grace to participate in the CFC before they must join other national federated fund-raising organizations to be eligible for participation in the future. The regulations, in addition, provide the means for the eventual participation of these local nonfederated agencies as part of national federations."

Devine said that a number of other comments and suggestions were incorporated in the final regulations, including many which made the rules clearer, or which solved technical problems. He said a decision was also made to modify the alphabetical listing of organizations in the CFC literature to allow agencies to be listed according to categories of service, each identified by its group affiliation, and with federated groups enumerated separately at the end of the listing.

Director Devine said that OPM had concluded that it was vital to proceed with the campaign under the new rules immediately, rather than delay implementation as some had suggested. "The changes are important enough to require

implementation at this time," Devine declared. "They will ensure a fairer, more rationally conducted campaign this year, and will give us the benefit of the many improvements in the CFC which are embodied in the new rules.

"I know that these regulations will ensure a more efficient, free, and open charitable fund raising drive which will help to enhance the President's drive to restore the spirit of voluntarism in America," Devine concluded. "I look forward to having the best year ever for charitable giving in the Federal government, and a sign that Federal employees believe strongly in the principal of individual voluntary help to those in need."

EXHIBIT F, RALSTON AFF.; C.A. NO. 83-

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND
AEROSPACE WORKERS
MACHINISTS BUILDING, 1300 CONNECTICUT AVENUE,
WASHINGTON, D.C. 20036
(Area Code 202—857-5200)

GL-14 United Way

August 18, 1982

TO ALL GRAND LODGE REPRESENTATIVES, SPECIAL REPRESENTATIVES, GRAND LODGE AUDITORS, BUSINESS REPRESENTATIVES, RAILROAD AND AIRLINE GENERAL CHAIRMEN, DISTRICT AND LOCAL LODGE ORGANIZERS, PRESIDENTS AND RECORDING SECRETARIES OF LOCAL LODGES AND PRESIDENTS AND SECRETARY-TREASURERS OF DISTRICT LODGES IN THE UNITED STATES

Dear Brothers and Sisters:

It is with great regret that I am urging all IAM members to withhold further support and to rescind all existing check-offs for the United Way Campaign this year.

We are not opposed to the many charitable causes which our members have always supported with great generosity and compassion in the past. We have always been known as a union with a heart. We will continue to support worthy causes. But as long as Reagan appointees pervert the fundamental purposes of the United Way, it no longer deserves our support. By making the National Right-to-Work (for less) Legal Defense and Education Foundation eligible to share in funds raised by the United Way Campaign in federal agencies, Reagan's appointees have perverted every accepted concept of charity and compassion.

So that you will understand exactly why this is such an insulting slap in the face to every working man and woman in America, let me tell you what the Legal Defense Foundation is and how it literally seeks to cut your throat.

This is a labor-hating, union-busting conspiracy primarily backed by big business and subsidized by corporations. It exists for the sole purpose of financing, managing and participating in lawsuits seeking to limit or destroy union security agreements and otherwise weaken unions. It sets union members against union members. It tries to weaken and bankrupt unions from within by subsidizing endless lawsuits, litigation and appeals piled upon appeals. Such a foundation has no more right to be included in a United Way Campaign than Jack the Ripper had to be invited to an afternoon tea party for maiden ladies.

Let me assure you we are not lightly or willingly withdrawing our support from the United Way. We realize that in years past a large part of the United Way's support has come from union members. To avoid this drastic action we asked national officials of the United Way to lodge a strong protest against this foul perversion of a charitable enterprise. They have refused to respond. So now let them get their funds from the labor-haters and the union-baiters. Instead of contributing to those who seek to destroy us I suggest that we should give directly to causes that we have traditionally supported and that have supported us. This year make your charitable contribution, including your check-off, to Guiding Eyes, Inc. and/or the City of Hope.

Fraternally yours,

/s/ William W. Winpisinger
WILLIAM W. WINPISINGER
International President

W/bo

cc: Executive Council
Kourpias
Holt

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS
MACHINISTS BUILDING, 1300 CONNECTICUT AVENUE
WASHINGTON, D.C. 20035

Office of the
International President

Area Code 202
857-5200

GL-14 United Way

August 17, 1982

Mr. Jordan L. Biscardo, Director
Department of Labor Participation
United Way of America
801 North Fairfax Street
Alexandria, Virginia 22314

Dear Mr. Biscardo:

This is to let you know that I am hereby withdrawing my June 2 letter endorsing the United Way Campaign to all union members. As long as the fraudulent, labor-hating, union-busting conspiracy known as the National Right-to-Work Legal Defense and Education Foundation is included among those eligible to receive funds from the United Way Campaign, unions would be insane to urge participation by union members. I have notified all our IAM lodges of this decision as well as the reasons for it. I have also asked our members to rescind any payroll check-offs they may have made for the United Way.

I regret having to make this decision but regret even more the failure of National United Way officials to protest the decision by Reagan appointees to make the Legal Defense Foundation eligible to share in funds raised by the United Way Campaign in federal agencies.

Sincerely,

WILLIAM W. WINPISINGER
International President

W/bo

cc: Executive Council
Holt
Kourpias

EXHIBIT G, RALSTON AFF.; CA. NO. 83-

AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS
815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5000

August 23, 1982

PRINCIPAL OFFICERS OF ALL AFL-CIO
STATE AND LOCAL CENTRAL BODIES

Dear Trade Unionist:

We are advised that some central labor council officers have been approached on the question of boycotting this years United Way campaign. This idea was prompted by a recent action to admit the National Right to Work Legal Defense Foundation to the list of agencies eligible to receive charitable contributions from federal employees. The issue is confined to federal employees.

We have been assured by the national officers of the United Way that no undesignated funds will go to this organization.

AFL-CIO policy on this matter was unanimously adopted on August 4, 1982 by the Executive Council in New York.

We have every expectation that this policy will be strictly adhered to by all AFL-CIO state and local councils.

All attempts to offer local resolutions at official council meetings contrary to the national policy should be deemed out of order.

I have enclosed a copy of the Executive Council statement for your information.

I appreciate your cooperation.

Sincerely and fraternally,

/s/ Walter G. Davis
WALTER G. DAVIS
Director
Department of Community Services

WGD:jy
Enclosure

ATTACHMENT B

STATEMENT BY THE AFL-CIO EXECUTIVE COUNCIL ON COMBINED FEDERAL CAMPAIGN

August 4, 1982
New York, New York

The Reagan Administration has granted yet another opportunity to the far right wing to enrich itself, this time at the expense of federal and postal employees and the needy.

The government's Combined Federal Campaign (CFC) is a program by which federal and postal employees make contributions to help the poor, the sick and the oppressed. On July 23, the CFC National Eligibility Committee voted 6-2—the two federal and postal employee representatives dissenting—to designate the National Right to Work Legal Defense Foundation as a "national service agency" that may participate in the federal fund raising campaign. This totally perverts the concept of charity.

Reaganomics has bloated the ranks of the unemployed and of those living in poverty while starving the social sector. As a result, the resources of agencies that minister to those who cannot provide for themselves are strained to the limits. These agencies and those they serve are in desperate need of the sustaining funds provided by the CFC. At the same time, the administration's actions against federal and postal employees—including RIFs, pay caps, furloughs and increased health plan contributions—make it increasingly difficult for these employees to find the money to make CFC contributions.

The decision of the CFC Eligibility Committee has a particular irony, since the stated purpose of the Right to Work Foundation is to oppose the union shop and the agency shop. Federal employees are not even permitted to bargain for, much less to obtain, these equitable means of spreading the costs of union representation among all those whom the union represents.

The AFL-CIO, together with its departments and its affiliated national and international unions, will make every effort to insure that federal and postal union members are

fully informed on the National Right to Work Committee Legal Defense Fund's goals and why it is neither a legitimate charity nor worthy of support. The AFL-CIO will strongly urge all federal and postal union members not to designate the National Right to Work Committee Legal Defense Fund as the recipient of any of their CFC contributions. Instead, the Federation urges members and all federal and postal employees to designate the agency or agencies that meet their definition of a true charity.

The AFL-CIO is confident that union members are willing to do their share to help this year's CFC drive meet its humanitarian goals but we believe that the decision to include the Right to Work Foundation in the Combined Federal Campaign cannot help but impair the enthusiasm with which trade union members respond to CFC solicitations. The inclusion of the Right to Work Foundation which was done administratively is an affront to all union members, and we urge administrative reconsideration and reversal of this decision.

Under CFC's rules, it is highly probable that the Right to Work Foundation will receive only any monies federal and postal employees specifically designate as contributions to that group, and toward that end, we intend to continue our efforts to insure that none of the local CFC's undesignated funds go to the Right to Work Foundation. The United Way, whose affiliates serve as the combined fund organizations throughout the country, has advised the AFL-CIO that its affiliates will distribute undesignated funds only to those agencies that have historically received such funds and not to groups such as the Right to Work Foundation.

The AFL-CIO and its affiliates representing federal employees, intend to study the structure and conduct of the Combined Federal Campaign and to examine the question of whether the current structure best serves the needs of the nation's voluntary agencies and the desires of federal and postal employees to support deserving charities.

EXHIBIT H, RALSTON AFF.; C.A. NO. 83-

RESOLUTION
REQUESTING PRESIDENT REAGAN TO AMEND E.O. 12353 GOVERNING COMBINED FEDERAL CAMPAIGN

WHEREAS, the Federal Government, in an effort to help meet basic human-care needs, has traditionally limited eligibility for the Combined Federal Campaign to charitable agencies providing direct health and welfare services to individuals and families, including health research; and

WHEREAS, Executive Order 12353 issued by President Reagan on March 23, 1982, has been interpreted and applied by Federal officials to extend eligibility for the Combined Federal Campaign to organizations beyond those providing direct health and welfare services to individuals and families, including health research; and

WHEREAS, this change in basic concept has aroused considerable controversy and threatens to diminish substantially the necessary broad base of financial support for the Combined Federal Campaign and the essential services of the health and welfare agencies participating therein; now, therefore, be it

RESOLVED, that United Way of America hereby reaffirms its support for limiting eligibility for the Combined Federal Campaign to charitable agencies providing direct, human-care services in the fields of health and welfare, including health research; and respectfully urges President Reagan to clarify and amend Executive Order 12353 to reflect such limitation.

Approved and Adopted by the Executive Committee, Board of Governors, United Way of America, September 8, 1982, Alexandria, Virginia.

September 15, 1982

The President of the United States
The White House
Washington, DC 20500

Dear Mr. President:

The Board of Governors of United Way of America, acting through its Executive Committee, has adopted the enclosed Resolution respectfully requesting Presidential action to amend Executive Order 12353 to limit eligibility for the Combined Federal Campaign to charitable agencies providing direct, human-care services in the fields of health and welfare, including health research.

When Executive Order 12353, restructuring the Combined Federal Campaign, was issued on March 23, 1982, there were high hopes in your Administration that it would mark the beginning of a new era of cooperative effort and support for the program's charitable purposes. Certainly, those hopes were shared by the some twenty million dedicated volunteers in United Way organizations across the nation.

Unfortunately, the Executive Order and the implementing regulations issued by the Director, U.S. Office of Personnel Management, have had an opposite, and I am sure, unintended effect.

We now find that the Combined Federal Campaign has become a source of intense controversy because of admission to the campaign of organizations whose principal purpose is other than the providing of direct human-care services and health research to persons and families in need of such services.

Illustrative of the controversy is that organized labor, because of the admission to the campaign of the National Right To Work Legal Defense Foundation, now regards the campaign as having departed from its original charitable purpose of support for human-care services. As a result, some unions with hundreds of thousands of members, including the National Association of Letter Carriers, have taken the position that the Combined Federal Campaign is

no longer deserving of employee support and have directed a boycott of the campaign.

The implications of these actions by organized labor can and do extend beyond the Combined Federal Campaign. Until now, in the cause of charity, leaders of government industry, and labor have been able to put aside any difference between them on other matters. They have come together at the workplace in a social compact to assist the less fortunate in our society through support of charitable endeavors such as the Combined Federal Campaign as well as the annual nationwide United Way campaign. To jeopardize that compact appears clearly to run contrary to the national interest and to the goals of your Administration.

Mr. President, on behalf of the more than 37,000 charitable health and welfare agencies that are participating members of United Way, we urge favorable consideration and appropriate action to clarify and amend Executive Order 12353.

Sincerely,

/s/ Donald V. Seibert
DONALD V. SEIBERT
Chairman, Board of Governors
United Way of America

DVS:dk
cc: William Aramony

EXHIBIT I; RALSTON AFF.; C.A. NO. 83-

LEGAL DEFENSE FUND
NAACP Legal Defense and Educational Fund, Inc.
10 Columbus Circle, New York, N.Y. 10019 (212) 586-8397
January 11, 1983

The Honorable Ronald Reagan
President of the
United States
The White House
Washington, D.C. 20500.

Dear Mr. President:

The purpose of this letter is to express the concern of the NAACP Legal Defense and Educational Fund, Inc. over reports that the existing Executive Order governing the Combined Federal Campaign may be changed so as to eliminate organizations such as ours from participation in the CFC. We are strongly opposed to any such modification of the existing Executive Order or regulations since we are firm in our belief that federal employees should be given the broadest possible choice between organizations to which they may wish to donate. We believe any restrictions such as those proposed by the United Way or others, would violate both the principle of free open competition and your expressed hope that individual citizens will, through charitable donations, provide services which the government can no longer afford.

It is our understanding that the alleged reason for a more restricted Combined Federal Campaign is that the inclusion of legal defense organizations has resulted in "controversy" and, therefore, to a lower level of giving by federal employees. The facts simply do not support such a claim. Attached is a letter we have just received from the Greater Milwaukee 1982 Combined Federal Campaign in which the coordinator notes with pride that this past campaign surpassed both this year's goal (by more than $60,000), and the prior year's record collection. This was despite the fact that 1,000 fewer federal employees participated. Similarly, pledges to our organization are running significantly ahead of those for the 1981 C.F.C.

We have noted that some of the proponents of restrictive regulations have argued, in support of their position, that fewer federal employees have contributed this year. However, it is to be expected that a smaller *number* of federal employees will give in light of the declining federal work force. What is of great significance is that the *level* of contributions is up. According to Dr. Donald Devine, at a meeting in December at which members of our staff were present, giving is up 7% compared to last year. We believe that the higher rate of giving is the direct result of a greater range of organizations being included in the CFC. A number of studies have confirmed that when employees are given a broad choice, contributions increase and no organization suffers.

Further, the notion that there is some difference between "traditional" charities and "advocacy" organizations, and that only the former category deserves the support of federal employees, is indefensible. The Legal Defense Fund has been recognized by the Internal Revenue Service as a bona-fide charity for more than 40 years. As a result of our work hundreds of thousands of minority employees have received ten's of millions of dollars in backpay and other employment benefits. Our litigation has resulted in new hospitals being constructed, prison conditions being improved, decent housing provided, improvements in education, and other tangible benefits to many persons. Thus, the notion that organizations such as ours are not providing immediate and meaningful help to persons long deprived because of discrimination is simply untrue.

The final, and perhaps most important consideration, is that any change in the Executive Order which would exclude certain organizations because of their alleged "controversial" nature would be flatly unconstitutional. The Supreme Court of the United States, in an unbroken series of decisions over a period of 45 years, has held over and over again that charitable solicitation is protected by the First Amendment.* It is, therefore, subject to only the most

*E.g., *Lovell* v. *Griffin*, 303 U.S. 444 (1938); *Village of Schaumburg* v. *Citizens for A Better Environment*, 444 U.S. 620 (1980); *Heffron* v. *Int'l Soc. for Krishna Consciousness, Inc.*, 452 U.S. 640 (1981).

narrow and limited regulations that are related to a compelling governmental interest. The Court has also held many times that alleged or perceived opposition to an organization's goals or programs cannot be the basis for regulating or denying such an organization free speech opportunities.

These decisions have been applied by the courts to the Combined Federal Campaign; indeed, it was as the result of such a case that the Legal Defense Fund has been able to participate.** That decision did not simply hold that organizations such as ours must be allowed to participate because their exclusion was not authorized by the existing Executive Order. To the contrary, the decision is founded on the First Amendment, and is based on the proposition that as long as there is a Combined Federal Campaign organizations cannot be included or excluded because of the nature of their programs.

We urge therefore that you resist the requests of a few to change the Executive Order. It would be most inappropriate to have federal bureaucrats impose their beliefs on government employees as to what constitutes valid or worthy charities. We believe that they are fully competent to decide such questions for themselves, and we are confident that you share our faith in the good judgment of the millions of men and women who are employed by the United States and serve in its Armed Forces.

Very truly yours,

/s/ Jack Greenberg

JACK GREENBERG
Director-Counsel

JG/gj
Enclosures

**NAACP Legal Defense and Educational Fund, Inc.* v. *Campbell*, 504 F. Supp. 1365 (D.D.C. 1981).

DEPARTMENT OF THE AIR FORCE
Headquarters 440th Combat Support Group (AFRES)
Gen Billy Mitchell Fld. 300E College Ave. Milwaukee WI 53207

Reply to Attn of: 440 CSG/DPM 5 Jan 1983
Subject: The Greater Milwaukee 1982 Combined Federal Campaign

To: NAACP Legal Defense and Educational Fund, Inc
10 Columbus Circle, Suite 2030
New York NY 10019

1. The 1982-83 CFC Committee of Greater Milwaukee has completed its 1982 campaign. I am pleased to inform you that we collected over $239,000.00. We not only surpassed our goal by more than sixty thousand, but surpassed last year's record collection with approximately one thousand less federal employees participating.

2. I've enclosed a copy of your agencies thirty word statement as used within our 1982 campaign. This may be used for your general reference. The agency that will oversee next year's campaign, here in the Milwaukee Area will be:

Social Security Administration
9401 Beloit Road
Milwaukee WI 53227

Please contact that office should any questions develope about that particular years campaign.

3. For your own information the United Way of Greater Milwaukee was selected as our "PCFO". They may be reached at the following address or phone:

United Way of Greater Milwaukee
606 East Wisconsin Avenue
Milwaukee WI 53202
Phone: (414) 271-0738

/s/ Franklyn E. Senft

FRANKLYN E. SENFT,
Major, USAFR CFC Coordinator

1 Atch
Agency Statement

CONTRIBUTOR PROFILE 1982-83

Please complete the following questionnaire to aid us in the administration of this year's National Service Agencies Campaign.

DATE March 2, 1983

GENERAL

Legal Name of Organization Combined Federal Campaign of the National Capital Area (PCFO- United Way of N.C.A.)

Contact Person Bill Schaeffler Title Director, CFC

Address 95 M Street, S.W., Washington, D.C. Zip 20024

Phone (202) 488-2075

Authorized Signature [signature]

PLEDGE INFORMATION

Total amount pledged $ $1,106,781.82 gross designations**

*Estimate of ~~prospect research~~ fund raising expenses $ $76,000 total CFC expenses***

*Estimate of NSA's share of expenses $ 44,270 - NSA share

Agency Designations
(See next page for names of agencies)

***per PCFO budget approved by Federal Coordinating Comm. (PERCENTAGE)

** We anticipate a loss on pledges causing an overall shrinkage of approximately 6½%. Therefore, we anticipate a payment of approximately $1,034,8

1. AFB	2.2900%	15. USO		29. NCPCA	3.8134
2. ASHA		16. CAS	0.5694	30. NII	0.3279
3. FEW	1.1257	17. CDF	4.7585	31. NRL	2.8210
4. ILRC	0.7599	18. CFI		32. NRW	2.6074
5. MA		19. CLD	1.0775	33. PLF	0.9366
6. NAACP/LDF	3.4924	20. CLF	0.1506	34. PP	18.0254
7. NAACP/SCF	2.8409	21. CSPI	0.4140	35. SO	
8. NBUF		22. LCCR	1.9107	36. UNCF	20.3490
9. NOW	2.9000	23. MLK	1.0607	37. USOC	3.0189
10. NRPA	0.3016	24. NAS	1.8308	38. VVAF	7.0623
11. NARF	1.1245	25. NBMC	0.5599	39. WS	3.3977
12. NRDC	1.1101	26. NCAI	1.1836	40. SCLDF	5.1192
13. PRLDF	0.3858	27. NCLC	0.1566	41. NPCA	1.5917
14. USS		28. NCNW	0.9263	TOTAL	100.0000%

Designations to NSA Federation to be shared among the Natl Serv Agencies:
NOTE: Be certain that the sum of the above percentages equals 100%.

$4,491.2
(gross des

*Please provide a statement detailing each expense.

BEST AVAILABLE COPY

Ex. K. Ralston Aff.; C.A. No. 83-

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
Washington D.C. 20415
February 2, 1983

MEMORANDUM FOR: Craig L. Fuller
Assistant To The President
For Cabinet Affairs

FROM: Donald J. Devine
Director
Office of Personnel Management

SUBJECT: NEW EXECUTIVE ORDER
FOR THE COMBINED FEDERAL
CAMPAIGN

I. INTRODUCTION

Pursuant to the direction given by the President at today's meeting of the Cabinet, I transmit herewith a draft of a new Executive Order for the Combined Federal Campaign. With the exception of very minor changes requested this afternoon by the Attorney General, this draft Executive Order is precisely in the form in which it was presented to the President. It would amend Executive Order 12353 (March 23, 1982) by limiting the Combined Federal Campaign (CFC) to health and welfare charities, thereby excluding, among others, advocacy groups and tax-exempt philanthropies that do not provide charitable health and welfare services. Preparations for the 1983-1984 CFC must soon begin; some time will be required to propose regulations implementing this new Order, giving notice thereof, receiving and considering comments thereon, and promulgating them. The time for approval of this Order is therefore short. Accordingly, pursuant to the instructions given to my General Counsel at your behest by the Associate Counsel to the President, I am directing this memorandum and its attachment to you and am simultaneously transmitting a copy hereof to the Attorney General so that he may expedite his consideration of its form and legality.

II. BACKGROUND

The CFC was initiated by President Kennedy in 1961 in order to control and simplify the process of charitable solicitation in the Federal workplace. *See* Executive Order No. 10927 (March 18, 1961). In the years prior to the implementation of the 1961 Executive Order, a growing number of charities had conducted separate fund drives for Federal workers, thereby creating an increasingly chaotic situation in Federal offices. In response to this problem, the 1961 Executive Order established a unified annual campaign for all charitable organizations. The 1961 Executive Order limited intrusions into the Federal workplace, and it contained certain requirements to ensure that contributions would be voluntary and confidential.

The CFC is conducted annually by the Federal government. Responsibility for its management was confided by President Kennedy in the Civil Service Commission. That responsibility today rests with the Office of Personnel Management (OPM). Federal employees are solicited for contributions to the CFC in meetings, by written materials printed by the Government, and by individual "key workers" who are Federal employees in each office. Employees may contribute in one lump sum or they may have a certain amount withheld from each paycheck. Employees also have the option of contributing to a general fund or designating specific organizations to receive their gifts. Donations to the general fund are distributed by a local community umbrella charity, such as the United Way. Employees may designate recipients of their gifts from a list of eligible organizations, which sets forth each organization's name and a general description of its purpose.

Eligibility for participation in the CFC was limited by the original Executive Order to "such national voluntary health and welfare agencies *and such other national voluntary agencies as may be appropriate.*" (Emphasis added.) In practice, participation was limited to traditional health and welfare charities that did not advocate, either through lobbying or litigation, a particular political position concerning public issues. These limitations were implemented

through regulations in a manual published by OPM concerning fund raising within the Federal Government. The manual included a provision that stated:

> Only non-profit, tax exempt charitable organizations supported by voluntary contributions from the general public and providing direct services to persons in the fields of health and welfare service are eligible for approval.

OPM interpreted the requirement that agencies provide "direct services" to preclude participation by organizations such as legal defense funds that acted as advocates for particular groups or causes.

This limitation, as implemented by OPM, was struck down by a Federal district court in *NAACP Legal Defense and Educational Fund, Inc.* v. *Campbell*, 504 F. Supp. 1365 (D.D.C. 1981). In that case, Judge Gerhard Gesell held that participation in the CFC was activity protected by the First Amendment and that "the government must meet First Amendment strictures in its regulations concerning access to this channel of communication, which is, in fact, the only channel by which organizations can appeal to government employees at their workplace." 504 F. Supp. at 1367. Based on this finding, the court ruled that the "direct services" requirement in OPM's regulations was not a clear enough standard upon which to exclude political advocacy groups. The court stated that the direct services language, "standing alone, is too vague to conform with the strict standards of specificity required when limits are placed on First Amendment activity." *Id.* Therefore, the court concluded that the CFC could not exclude advocacy groups such as the NAACP Legal Defense and Educational Fund on the basis of the vaguely worded standard. In so ruling, however, the Court exhorted "the government officials responsible for the program to re-examine the basic premises on which the program was established so that more acceptable standards can be developed which will ensure continuation of the government's significant and useful support for worthy charity." 504 F. Supp. at 1369.

After this decision, this Administration decided to revise President Kennedy's Executive Order, but after considering various alternatives, decided, at least for the 1982 campaign, to retain the previous definition of eligible agencies, even though it recognized that the Government would not be able to use that standard to exclude groups such as the NAACP Legal Defense Fund and other organizations that participate in litigation in order to influence public policy. Therefore, the CFC now includes representatives of a wide variety of points on the political spectrum, including, for example, the National Right to Work Legal Defense Foundation, the NOW (National Organization for Women) Legal Defense and Education Fund, and the Sierra Club Legal Defense Fund. Many additional politically oriented groups, apparently qualifying as legal defense or similar funds, have applied to participate in the 1983 CFC. Among them is a group called the "National Association for the Advancement of White People."

The influx of politically oriented litigation groups, as opposed to organizations providing direct health and welfare services to individuals, has adversely affected the CFC in the 1982 campaign. Many employees objected to the participation of certain newly admitted groups. Several unions organized boycotts of the CFC because of the participation of such groups as the Right to Work Legal Defense Fund. The boycotts and protests caused a decline in the number of contributors to the CFC. Although the total amount of money raised in 1982 was slightly greater than in 1981, this result was achieved notwithstanding the many controversies that prevented the CFC from attaining a higher level of success. Threatened group or individual boycotts were limited by the Administration's promise to restrict next year's CFC to traditional health and welfare charities. If the participation requirements are not modified, OPM anticipates that there will be a significant drop in contributions to the 1983 CFC.

In addition, as the President has said, there are moral dimensions to this issue. The CFC is meant to promote the health of all Americans and the welfare of the needy; in so doing, it is meant to lessen the burdens of government in these fields. It is not intended to be a general vehicle for Government-supported fund-raising on behalf of all philan-

thropy. It is certainly not proper for the Government to use taxpayer resources to raise funds for advocacy organizations and political education groups, however worthy or sympathetic may be their causes.

Because of the problems caused by the participation of aggressive and controversial political and legal advocacy groups, and because it is becoming increasingly difficult to draw any lines and keep participation to a manageable number of organizations, the President has directed us to revise the Executive Order to limit the CFC to traditional health and welfare agencies. These revisions are set forth in the attached draft Order. It would eliminate from the existing Executive Order the reference to "such other national voluntary agencies as may be appropriate," so that § 1 of the Order would limit participation to "voluntary health and welfare agencies." It would also amend § 2 of the existing Order to establish certain principles and policies to guide the Director of OPM in developing specific criteria for participation in the CFC. These policies specify that participants (agencies that would be listed to receive designated donations by individual employees) must be "voluntary, charitable, health and welfare agencies that provide or substantially support direct health and welfare services to individuals or their families." In addition, the draft states:

> Such direct health and welfare services must be available to Federal employees in the local campaign solicitation area, unless they are rendered to needy persons overseas. Such services must directly and primarily benefit human beings, whether children, youth, adults, the aged, the ill and infirm, or the mentally or physically handicapped. Such services must consist of care, research, or education in the fields of human health or social adjustment and rehabilitation; relief of victims of natural disasters and other emergencies; or assistance to those who are impoverished and therefore in need of food, shelter, clothing, education, and basic human welfare services.

Finally, the draft also contains a specific limitation that provides:

> Agencies that seek to influence the outcomes of elections or the determination of public policy through political activity or advocacy, lobbying, or litigation on behalf of parties other than themselves shall not be deemed charitable health and welfare agencies and shall not be eligible to participate in the Combined Federal Campaign.

III. PURPOSE OF THE NEW EXECUTIVE ORDER

The purpose of the new Executive Order is to restate the legitimate government interest in establishing the CFC: to prescribe necessary eligibility standards for participation in the CFC that are consistent with those legitimate government interests; and to set forth such standards with the precision necessary to meet constitutional requirements when the government affects or restricts First Amendment activities. The new Executive Order would modify Executive Order 12353 (March 23, 1982).

A summary of the salient features of the proposed Executive Order is as follows:

Section 1(a) modifies §1 of the existing Executive Order by deleting the words "such national" and "and such other national voluntary agencies as may be appropriate." This change has three effects. First, it permits participation in the CFC by local as well as national voluntary agencies, in keeping with the President's emphasis on community action. Second, it confines participation in the CFC to voluntary health and welfare agencies, Third, it limits the discretion of the Director of OPM by removing the injunction that he determine which "other national voluntary agencies ... may be appropriate." Instead, the President has determined that only participation by health and welfare charities is appropriate, and there is therefore no justification for the Director to have license to determine the "appropriateness" of any non-health-and-welfare organization.

Section 1(b) informs the rule-making discretion of the Director of OPM by establishing a clear policy governing eligibility for CFC participation that makes it a vehicle for fund-raising for health and welfare charities; by expressly limiting eligibility to health and welfare charities and defining the nature and characteristics of such charities; by expressly excluding advocacy, lobbying, and political action groups from the CFC; by expressly setting the requirement

of a direct local presence so that the campaign be a local community effort but also by expressly permitting participation by international health and welfare charities that, by dint of the external emphasis of their work, may not have local presences in CFC solicitation areas; and by expressly permitting participation by unaffiliated, local health and welfare charities.

Section 2 continues in force all current CFC rules and regulations unless and until they are modified or revoked in accordance with the new Order.

IV. BUDGETARY IMPLICATIONS

There are no increased budgetary requirements associated with the new Executive Order. Some indirect economies may reasonably be anticipated in terms of reducing the time required of the local Federal officials to arrange for, and supervise, the conduct of local CFCs in their respective areas. Because litigation is highly likely, modest costs of legal defense will be incurred.

V. TIMING

For reasons set forth in the Introduction to this memorandum, the earliest possible promulgation of the Executive Order is required. Preparations for the 1983-1984 CFC are already two months behind schedule.

VI. CONCLUSION

As President Reagan said in his recent memorandum on the Combined Federal Campaign, "Through voluntary giving, we prove that individuals can do on their own without having to go through government channels." This is particularly true at a time when the imperative of revitalizing the private sector of the economy necessitates retrenchment in Federal expenditures. These cutbacks in social assistance programs could be partially, even if modestly, offset by the efforts of private, voluntary health and welfare organizations aided by the support derived through the CFC. The revised Executive Order is urgently required if the CFC is to continue to fulfill its intended purposes of lessening governmental burdens, strengthening private health and welfare institutions, and meeting America's health and welfare needs.

EXECUTIVE ORDER
CHARITABLE FUND-RAISING

By the authority vested in me as President by the Constitution of the United States of America, and in order to lessen the burdens of government and of local communities in meeting needs of human health and welfare, it is hereby ordered as follows:

Section 1. Executive Order 12353 is amended as follows:

(a) In Section 1 delete "such national" and "and such other national voluntary agencies as may be appropriate".

(b) In Section 2 insert "(a)" after the Section number and add the following new subsections:

"(b) In establishing those criteria, the Director shall be guided by the following principles and policies:

"(1) The objectives of the Combined Federal Campaign are to lessen the burdens of government and of local communities in meeting needs of human health and welfare; to provide a convenient channel through which Federal public servants may contribute to these efforts; to minimize or eliminate disruption of the Federal workplace and costs to Federal taxpayers that such fund-raising may entail; and to avoid the reality and appearance of the use of Federal resources in aid of fund-raising for political activity or advocacy of public policy, lobbying, or philanthropy of any kind that does not directly serve needs of human health and welfare.

"(2) To meet these objectives, eligibility for participation in the Combined Federal Campaign shall be limited to voluntary, charitable, health and welfare agencies that provide or substantially support direct health and welfare services to individuals or their families. Such direct health and welfare services must be available to Federal employees in the local campaign solicitation area, unless they are rendered to needy persons overseas. Such services must directly and primarily benefit human beings, whether children, youth, adults, the aged, the ill and infirm, or the mentally or physically handicapped. Such services must consist of care, research, or education in the fields of human health or social adjustment and rehabilitation; relief of

victims of natural disasters and other emergencies; or assistance to those who are impoverished and therefore in need of food, shelter, clothing, education, and basic human welfare services.

"(3) Agencies that seek to influence the outcomes of elections or the determination of public policy through political activity or advocacy, lobbying, or litigation on behalf of parties other than themselves shall not be deemed charitable health and welfare agencies and shall not be eligible to participate in the Combined Federal Campaign.

"(4) International organizations that provide health and welfare services overseas, and that meet the eligibility criteria except for the local services criterion, shall be eligible to participate in each local solicitation area of the Combined Federal Campaign.

"(5) Local voluntary, charitable, health and welfare agencies that are not affiliated with a national agency or federation but that satisfy the eligibility criteria set forth in this Order and by the Director, shall be permitted to participate in the Combined Federal Campaign in the local solicitation areas in which they provide or substantially support direct health and welfare services."

Section 2. All rules, regulations, and directives continued or issued under Executive Order No. 12353 shall continue in full force and effect until revoked or modified under the provisions of this Order.

THE WHITE HOUSE
February , 1983

STATEMENT OF THE NATIONAL COALITION FOR HEALTH AND WELFARE

We applaud the correct and decisive action of President Reagan and Director Devine in restoring the Combined Federal Campaign to its proper role as an instrument of support for America's truly needy. By firmly establishing the CFC as a fund-raising appeal on behalf of health and welfare charities, they have ensured the continued support of the Federal work force for these vital efforts.

America's Federal workers—including civil servants, postal employees, and our men and women in uniform—have always been generous with their personal resources. Over the years, their sustained support has meant a great deal in the common fight against hunger, ignorance, poverty, and disease. The Combined Federal Campaign has been, and should be, an important channel of assistance to the private-sector charities that are the front-line in the struggle for American health and well-being, not just at the national level, but in every local community across-the land. We know that this is President Reagan's goal, too, and we are grateful that today's action moves so strongly in the right direction.

The undersigned organizations which are members of the National Coalition for Health and Welfare, representing the community of America's private-sector health and welfare charities, extend to President Reagan, Director Devine, and every Federal employee our heartfelt thanks for your generosity and our pledge to continue to work in partnership with you toward our common goals:

American Cancer Society
American Foundation for the Blind
American Kidney Fund, Inc.
American Lung Association
American Red Cross
Boy Scouts of America
Camp Fire, Inc.
Council of Jewish Federations, Inc.
Family Service Association of America
Girl Scouts of the U.S.A.

March of Dimes Birth Defects Foundation
National Board of the YWCA of the U.S.A.
National Conference of Catholic Charities
National Homecaring Council
National Mental Health Association
Salvation Army
U.S.O. World Headquarters
United Way of America
YMCA of the U.S.A.
Boys Clubs of America

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., ET AL., PLAINTIFFS

v.

HON. DONALD J. DEVINE, DIRECTOR, UNITED STATES OFFICE OF PERSONNEL MANAGEMENT, DEFENDANT

AFFIDAVIT OF JACK GREENBERG

STATE OF NEW YORK
: SS.:
COUNTY OF NEW YORK

JACK GREENBERG, being duly sworn, deposes and says:

1. I hold the position of Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc. I am chief executive officer of the Fund and as such have detailed knowledge of the Fund's purposes, programs and operations.

2. The purpose of this affidavit is to supplement my affidavit filed in support of plaintiffs' Motion for Summary Judgment granted by the Court in *NAACP Legal Defense and Education Fund, Inc.* v. *Campbell*, C.A. No. 80-1888 (504 F. Supp. 1365 (D.D.C. 1981)). The earlier affidavit is incorporated herein by reference and a copy thereof is attached hereto as Exhibit "L".

3. The Legal Defense Fund is incorporated under the laws of the State of New York as a legal aid society. Its charter states that its purpose is to provide legal assistance to Blacks who are otherwise financially unable to obtain the same. Our charter also provides that the Fund shall carry out programs in education and other related areas.

4. The litigation we bring is primarily large scale class actions in federal court. The costs of such cases are beyond the means of virtually anyone who is not extremely wealthy. For example, a Title VII case against a major em-

ployer brought as a class action typically will involve expenses of $100,000 or more to bring the case to trial. If a case is appealed the costs will be greater. Thus, although we do not have a set standard of indigency by which persons are measured before they can obtain our services, in fact in all civil cases we represent persons and classes of persons who otherwise would not be able to afford the litigation.

5. The Fund's criminal law docket consists of litigation exclusively on behalf of persons who are truly indigent. The vast majority of our criminal cases in recent years have been on behalf of persons faced with the death penalty. Since it rarely happens that a defendant of means receives the death penalty, our clients, whether white or black, are impoverished. We do not represent any such defendant who can afford his or her own counsel.

6. The Legal Defense Fund is not a political action or advocacy organization within the meaning of the Internal Revenue Code or under any reasonable definition of those terms. Any legislative activity that we conduct is in full conformity with the requirements of the Internal Revenue Code and the regulations of the Internal Revenue Service, and comprises a small percentage of the Fund's work. Much of our legislative work consists of responding to inquiries for information and testimony by committees of the Congress of the United States. Virtually all of our legislative activities relate to specific statutes or proposed legislation which would directly impact upon the work we do or upon the rights of Blacks and other minority persons.

7. We are in no way involved in political activity with regard to elections. We have over the years brought litigation relating to voting rights and the denial thereof to Black and other minority citizens. These actions are not partisan in nature, but are to enforce the rights of all Americans to equal access to the voting booth and to fair representation in legislative bodies through appropriate reapportionment and redistricting.

8. With regard to our other litigation activities, we are not involved in ligitation which is designed to bring about

changes in public policy. Almost all of our cases are filed under statutes passed by the Congress of the United States, including the Civil Rights Act of 1964, the Voting Rights Act, the Fair Housing Act, et cetera. In addition, other litigation, particularly in the area of criminal law, is brought to enforce rights guaranteed by the Constitution of the United States.

9. In virtually all of our cases, except those few in which the Legal Defense Fund itself is a party, we represent individual plaintiffs or classes of individuals. Our primary purpose is to represent individuals and classes of individuals to help them secure their rights under the laws and Constitution of the United States. Although our litigation is designed to assist certain groups of persons, primarily Blacks and, to a lesser extent, other minorities, it is not brought for abstract causes.

10. As described in our earlier pleadings, and as set out in the earlier decision of this Court, the result of our litigation has been the conferring of specific benefits directly to individuals. For example, we have just recently settled a fair employment action against a major tobacco company which resulted in the payment of $3.8 million in back pay to black present and former employees of the company. In 1982 alone our fair employment cases resulted in $8,000,000 in back pay for our clients. In another recently settled action against a major city police department, Blacks will receive specific promotions to particular jobs and thus higher pay and benefits. As a result of other actions, hospitals will be providing additional health care to indigent Blacks and other patients, and presently segregated school systems will be integrated, resulting in better education, in conformity with the Constitution for all children. We continue with our scholarship programs, which grant hundreds of thousands of dollars annually in scholarships to black students to pursue undergraduate and law degrees. Other litigation currently on our docket involves equal access to housing and to other public benefits. Thus, in every respect, the result of our work is to provide direct services

and benefits to persons long denied jobs, equal incomes, housing, and education, among other basic human needs.

/s/ Jack Greenberg
JACK GREENBERG

Sworn to and subscribed before
me this 22nd Day of March, 1983.
/s/ Gloria A. Jones
GLORIA A. JONES
Notary Public

EXHIBIT L, GREENBERG AFF.; C.A. NO. 83-

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 80-1888

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.,
PLAINTIFF,

v.

HON. ALAN CAMPBELL, DIRECTOR,
UNITED STATES OFFICE OF PERSONNEL MANAGEMENT,
DEFENDANT.

Civil Action No. 80-2070

PUERTO RICAN LEGAL DEFENSE AND EDUCATION FUND,
INC., PLAINTIFF,

v.

HON. ALAN CAMPBELL, DIRECTOR,
UNITED STATES OFFICE OF PERSONNEL MANAGEMENT,
DEFENDANT.

AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

JACK GREENBERG, having been duly sworn, deposes and says:

1. I am an attorney admitted to the practice of law in the State of New York and in various federal courts.

2. Since 1961 I have held the position of Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc., and am the chief executive officer of the corporation. I was first employed by the Fund in 1948 and have worked for it continuously since. My responsibilities as

Director-Counsel have required me to become familiar with the history of the organization and the various documents relating to that history. Similarly, my duties require me to be knowledgeable of the actions of the Fund's Board of Directors, all of the meetings of which I attend, and of the day to day operations of the Fund's staff. Therefore, the matters set out in this affidavit are based on my personal knowledge.

3. The NAACP Legal Defense and Educational Fund, Inc., was incorporated in 1940 following the approval by the Appellate Division of the Supreme Court, First Judicial Department under Section 280 of the Penal Law of the State of New York (now, § 495 of the Judiciary Law) which allows legal aid societies to incorporate for the practice of law. (See, Exhibit "A" for true and accurate copies of the original incorporation papers and subsequent amendments.)

4. The Fund was established pursuant to a resolution of the Board of Directors of the National Association for the Advancement of Colored People (NAACP) for the purpose of obtaining tax-exempt status for those activities of the NAACP which could so qualify. Thus, its purposes were stated:

> (a) To render legal aid gratuitously to such Negroes as may appear to be worthy thereof, who are suffering legal injustices by reason of race or color and unable to employ and engage legal aid and assistance on account of poverty.
>
> (b) To seek and promote the educational facilities for Negroes who are denied the same by reason of race or color.
>
> (c) To conduct research, collect, collate, acquire, compile and publish facts, information and statistics concerning educational facilities and educational opportunities for Negroes and the inequality in the educational facilities and educational opportunities provided for Negroes out of public funds; and the status of the Negro in American life.
>
> (d) The corporation shall not engage in any activities for the purpose of carrying on propaganda, or otherwise attempting to influence legislation, and shall operate without pecuniary benefit to its members.

(See, Exhibit "A"). On April 30, 1940, the Office of the Commissioner of Internal Revenue granted the Fund tax-exempt status, which it has continued to enjoy, under the predecessor to Section 501(c)(3) of the Internal Revenue Code. (See, Exhibit "B", consisting of true and accurate copies of official documents relating to the Fund's tax-exempt status.)

5. For many years the NAACP and the NAACP Legal Defense Fund had interlocing boards of directors and operated out of the same offices. However, because of the requirements of the internal revenue laws as they were then written, the two organizations became completely separate in fact as well as in law by late in the 1950s. Thus, for more than 20 years the Fund has had its own Board of Directors, staff, fund-raising operation, and budget. It is completely independent of all other organizations. Because of changes in the internal revenue laws which allowed a non-tax-exempt organization to set up a subsidiary corporation to conduct activities that were eligible for tax-exemption, the NAACP established the NAACP Special Contribution Fund in the early 1960s. The Special Contribution Fund conducts litigation and other charitable activities of the NAACP and therefore now performs the same role as did the Legal Defense Fund when it was originally established.

6. The central purpose of the NAACP Legal Defense Fund is to achieve full equality for Blacks and other minorities through a variety of means. Its main activity is litigation, but it also distributes approximately $500,000 in scholarships each year to undergraduate and law students, conducts education activities for attorneys engaged in civil rights work, and has other public information and community development programs.

7. The Fund's litigation program is carried out by 19 lawyers in its New York Office and three lawyers in its Washington office, working in co-operation with hundreds of lawyers in private practice throughout the country. The involvement of Fund attorneys in a particular case may range from handling it from its inception, including drafting the pleadings, preparing for trial, trying the case, etc., to coming in at the appellate or Supreme Court levels. In all

Fund cases (except the relatively few in which it acts as *amicus curiae*) its attorneys are attorneys of record and directly represent the clients in every sense of the word. They may act as lead counsel or in a supporting role, depending on the nature of the case, the needs of the cooperating attorney, and available resources.

8. The Fund's cases have involved virtually all subjects the civil rights area, the single largest category in recent years, being employment discrimination cases against private employers, state and local governments, and federal agencies including, incidentally, the Office of Personnel Management itself. We also represent plaintiffs in cases in the areas of school desegregation, housing discrimination, health care, voting rights, prison reform, and police misconduct. In addition, we represent criminal defendants, mostly persons facing the death penalty. (See, Exhibit "C" and "D", the Fund's current docket and annual reports which contain a list of its cases and a description of its programs.)

9. Because our program is nationwide and our resources are limited, we are not able to represent all persons who seek our services. Our case selection is based on a number of criteria. First, the case must relate to our overall goal of promoting equal justice and equality of opportunity of Blacks and other minorities, although this does not mean that we limit our services to a particular racial group. In the capital punishment area, for example, we represent all persons faced with the death penalty and have obtained the reversal of death sentences of well over 1,000 persons of all races. Second, although our charter speaks of services to "indigents," we do not have a set income test; most of our cases are major class actions which are beyond the means of all but the wealthy.

10. Third, and of central importance, we select cases based on their potential for providing direct benefits to as many persons as possible. In the area of employment discrimination, for example, we have sought to identify those industries and employers which, if their patterns of discrimination were changed, would provide maximum opportunities to Blacks. Thus, many of our cases are against such

growth industries as pulp and paper, textiles, and trucking in the South, and against such major employers as the United States Steel Corporation and agencies of the federal government. Since our cases are class actions brought on behalf of all Blacks or minority employees, applicants for employment, etc., we are able to represent and obtain direct benefits for thousands of persons in a single lawsuit. As a result, we have obtained tens of millions of dollars in back pay for hundreds of thousands of individuals, as well as incalculable future benefits in the form of promotions, etc. (See, Exhibit "E" for a compilation of representative cases in the period up to 1979.) Our other cases have also resulted in direct and concrete benefits to individuals. To give some recent examples, a case against a major hospital in Gary, Indiana, culminated in the spending of approximately $20,000,000 to upgrade an inner-city facility and provide greatly increased health care services to its client population. An action against the Georgia Department of Corrections resulted in the expenditure of nearly $20,000,000 for new central medical and mental health care facilities, as well as the renovation of the main prison facility at a cost of over $46,000,000. And, of course, our continuing school desegregation litigation has resulted, ever since *Brown* v. *Board of Education* in 1954, in incalculable improvement in the educations received by hundreds of thousands of Blacks with all of the benefits flowing therefrom.

11. For these reasons, the conclusion that the NAACP Legal Defense Fund does not provide "direct services," in any accepted meaning of that term, is based on a complete lack of understanding of the nature and effect of the Fund's activities. Its lawyers represent clients directly in the same way as do other lawyers; it is not engaged in the vindication of some abstract principle. Rather, it selects cases with a view towards making equal opportunity a practical and concrete reality. As a result, hundreds of thousands of persons have received direct benefits such as income supplementation in the form of back pay and future earnings, better educations, improved health care, better housing and other living conditions, humane conditions of incarceration

and, in the case of our capital punishment program, life itself.

/s/ Jack Greenberg
JACK GREENBERG

Subscribed and sworn to before me this 25th day of November, 1980.

/s/ Gloria A. Jones
GLORIA A. JONES
Notary Public

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 15th day of March 1940

Present—Hon. FRANCIS MARTIN, *Presiding Justice*,
Hon. JAMES O'MALEFY,
Hon. ALFRED H., TOWNLEY, JUSTICES
Hon. EDWARD S. DORF,
Hon. ALBERT COHN, *Justices*

IN THE MATTER OF THE APPLICATION
FOR THE APPROVAL OF CERTIFICATE OF INCORPORATION

of

N.A.A.C.P. LEGAL DEFENSE AND
EDUCATIONAL FUND, INC.

A motion having been made by the N.A.A.C.P. Legal Defense and Educational Fund, Inc., for the approval by this court, pursuant to section 280 of the Penal Law of the State of New York, of the certificate of incorporation proposed to be filed with the Secretary of State at Albany, New York, by the said N.A.A.C.P. Legal Defense and Educational Fund, Inc.,

Now, upon reading and filing the notice of motion, with proof of due service thereof upon the Association of the Bar of the City of New York, the New York County Lawyers' Association and the Bronx County Bar Association, and the affidavit of Arthur B. Spingarn in support of said motion, and after hearing Mr. Arthur B. Spingarn for the motion, and no one appearing in opposition,

It is ordered that the said motion be and the same is hereby granted, and this court hereby approves of the Certificate of Incorporation of N.A.A.C.P. Legal Defense and Educational Fund, Inc., executed and acknowledged on the 11th day of October, 1939.

APPELLATE DIVISION OF THE SUPREME COURT,
FIRST JUDICIAL DEPARTMENT,
Clerk's Office, County of New York.

I, GEORGE T. CAMPBELL, Clerk of the Appellate Division of the Supreme Court in the First Judicial Department, do hereby certify that the foregoing is a copy of the order made by said court in the above entitled proceeding, and entered in my office on the 15th day of March, 1940.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, in the County of New York, this 15th day of March, 1940.

/s/ _____
GEORGE T. CAMPBELL
Clerk

(SEAL)

THE UNIVERSITY OF THE STATE OF NEW YORK

STATE OF NEW YORK:
: SS.
COUNTY OF ALBANY:

Pursuant to the provisions of Section 11, Article 2 of the Membership Corporations Law, as amended by Chapter 320 of the Laws of 1935, consent is hereby given to the filing of the annexed certificate of incorporation of "N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC." as a membership corporation.

This consent, however, shall in no way be construed as an approval by the Education Department, Board of Regents or Commissioner of Education of the purposes and objects of this corporation, nor shall it be construed as giving the officers or agents of this corporation the right to use the name of the University of the State of New York, Education Department, Board of Regents or Commissioner of Education in its publications and advertising matter.

IN WITNESS WHEREOF, I Ernest E. Cole, Acting Commissioner of Education of the State of New York, for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 13th day of October, 1939.

/s/ _____
ERNEST E. COLE
Acting Commissioner
of Education

(SEAL)

CERTIFICATE OF INCORPORATION OF N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

Pursuant to Article II of the
Membership Corporations Law

We, the undersigned, desiring to form a membership corporation pursuant to Article II of the Membership Corporation Law of the State of New York, do hereby make, subscribe and acknowledge this Certificate for that purpose, as follows:

FIRST: The name of the proposed corporation is N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

"N.A.A.C.P." is the abbreviation for the name National Association for the Advancement of Colored People.

SECOND: The corporation is to be formed for the following purposes:

(a) To render legal aid gratuitously to such Negroes as may appear to be worthy thereof, who are suffering legal injustices by reason of race or color and unable to employ and engage legal aid and assistance on account of poverty.

(b) To seek and promote the educational facilities for Negroes who are denied the same by reason of race or color.

(c) To conduct research, collect, collate, acquire, compile and publish facts, information and statistics concerning educational facilities and educational opportunities for Negroes and the inequality in the educational facilities and educational opportunities provided for Negroes out of public funds; and the status of the Negro in American life.

(d) The corporation shall not engage in any activities for the purpose of carrying on propaganda, or otherwise attempting to influence legislation, and shall operate without pecuniary benefit to its members.

THIRD: The territory in which its operations are principally to be conducted is the United States of America, the

territories, colonies and dependencies of the United States of America and the District of Columbia.

FOURTH: The office of the corporation shall be located in the Borough of Manhattan, City, County and State of New York.

FIFTH: The number of its directors shall be not less than five, and not more than fifty.

SIXTH: The names and residences of the directors until the first annual meeting are as follows:

Dr. William Allan Neilson
470 West 24th Street
New York City, New York

Mr. Arthur B. Spingarn
60 Gramercy Park, North
New York City, New York

Hon. William H. Hastie
1221 Fairmont Avenue, N.W.
Washington, D.C.

Hon. Herbert H. Lehman
State Executive Mansion
Albany, New York

Miss Mary White Ovington
12 East 97th Street
New York City, New York

Hon. Charles F. Toney
409 Edgecombe Avenue
New York City, New York

Hon. Hubert T. Delany
335 Edgecombe Avenue
New York City, New York

SEVENTH: All of the subscribers to this certificate are of full age; at least two thirds of them are citizens of the United States; at least one of them is a resident of the State of New York. Of the persons named as directors, at least one is a citizen of the United States and a resident of the State of New York.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 11th day of October, 1939.

/s/ _____
WILLIAM A. NEILSON (L.S.)

/s/ _____
ARTHUR B. SPINGARN (L.S.)

/s/ _____
MARY W. OVINGTON (L.S.)

/s/ _____
CHARLES E. TONEY (L.S.)

/s/ _____
HUBERT T. DELANY (L.S.)

STATE OF NEW YORK :
: ss.
COUNTY OF NEW YORK :

On this 11th day of October, 1939, before me personally came William A. Neilson, Arthur B. Spingarn, Mary W. Ovington, Charles E. Toney, Hubert T. Delany, to me known and known to be the same persons described in and who executed the foregoing certificate of incorporation and they thereupon duly and severally acknowledged to me that they executed the same.

FRANK M. TURNER
NOTARY PUBLIC
Queens Co. Clk. No. 3089
N.Y. Co. Clk. No. 336
Commission expires March 30, 1940

STATE OF NEW YORK :
: ss.
COUNTY OF NEW YORK :

/s/ H. H Zand, BEING duly sworn deposes and says: That he is the attorney for the subscribers to the annexed Certificate of Incorporation, that no previous application for the approval of said Certificate has been made to any Justice of the Supreme Court of the State of New York.

Sworn to before me this 11th day of October, 1939.

/s/ _____
H.H. ZAND

FRANK M. TURNER
NOTARY PUBLIC
Queens Co. Clk. No. 3039
N.Y. Co. Clk. No. 336
Commission expires March 30, 1940

I, HON. JULIUS MILLER, a Justice of the Supreme Court of the State of New York, hereby approve the foregoing Certificate of Incorporation of N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC. Dated, N.Y. October 25, 1939.

/s/ _____
JULIUS MILLER
Justice of the Supreme Court
of the State of New York

APPELLATE DIVISION OF THE SUPREME COURT,
FIRST JUDICIAL DEPARTMENT

IN THE MATTER OF THE APPLICATION FOR
THE APPROVAL OF CERTIFICATE OF INCORPORATION

of

N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

STATE OF NEW YORK:
: SS.
COUNTY OF NEW YORK:

ARTHUR B. SPINGARN, being duly sworn, deposes and says; that he is an Attorney-at-Law admitted to practice in the State of New York, with offices at No. 36 West 44th St., Borough of Manhattan, New York City.

That he is one of the subscribers to the Certificate of Incorporation of "N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.", and one of the members of the Board of Directors named therein to serve until the first Annual Meeting of said corporation, and is fully familiar with all the facts and matters relating to the proposed corporation.

That this affidavit is made for the purpose of obtaining the approval by this Court, pursuant to Section 280 of the Penal Law of the State of New York, to the Certificate of Incorporation proposed to be filed with the Secretary of State at Albany, New York.

That said corporation is being organized under Article II of the Membership Corporations Law, and said Certificate of Incorporation was approved by Mr. Justice Julius Miller, a Justice of the Supreme Court of the State of New York, under date of October 25th, 1939, and the consent of the State Education Department was obtained under date of October 13th, 1939; all of which more fully appears in the copy of the Certificate of Incorporation hereto attached, the original of which will be submitted to this Court upon the return day of the motion.

That the proposed corporation is being organized solely for benevolent and charitable purposes, without pecuniary benefits to its members or directors.

That the purposes as set forth in the Certificate of Incorporation are: —— ——

"SECOND:—The corporation is to be formed for the following purposes:

(a) To render legal aid gratuitously to such Negroes as may appear to be worthy thereof, who are suffering legal injustices by reason of race or color and unable to employ and engage legal aid and assistance on account of poverty.

(b) To seek and promote the educational facilities for Negroes who are denied the same by reason of race or color.

(c) To conduct research, collect, collate, acquire, compile and publish facts, information and statistics concerning educational facilities and educational opportunities for Negroes and the inequality in the educational facilities and education opportunities provided for Negroes out of public funds; and the status of the Negro in American life.

(d) The corporation shall not engage in any activities for the purpose of carrying on propaganda, or otherwise attempting to influence legislation, and shall operate without pecuniary benefit to its members."

That the activities which the proposed corporation intends to carry on under subdivision (a) of paragraph "Second" of said Certificate of Incorporation are as follows:

To take all necessary and proper steps provided for by law in such instances where the individuals involved are not in a financial position to do so, in order that the rights guaranteed and provided for Negro citizens under the Constitution of the United States of America and of the several States may not be denied to them because of their race or color.

To investigate all meritorious complaints which are brought to its attention, and, in such instances where the proposed corporation deems it within its purposes as aforesaid, to provide funds for the retention of an attorney or attorneys in each individual case, said attorney or attorneys to represent the individuals personally whose legal rights are affected.

The proposed corporation also intends to furnish funds for the purpose of engaging the services of an attorney or attorneys:

(a) To institute or defend legal actions in such cases where the Constitutional rights of indigent Negroes are involved;

(b) To institute and defend such actions as will protect the rights of Negro citizens to vote and in order that the rights of said Negro citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race or color;

(c) To secure to indigent Negroes the right to a fair and impartial jury trial, so that such a trial shall not be denied to them by reason of their race or color; and

(d) To maintain such legal actions as may be necessary to contest any laws which tend to abridge the privileges or immunities of Negro citizens of the United States guaranteed by the Federal and the several State Constitutions, and which tend to deprive said Negro citizens of their life, liberty or property without due process of law and which tend to deny to said Negro citizens the equal protection of the laws.

The proposed corporation sought to be formed does not intend to act as a general legal aid society, but will limit its activities solely to cases where the rights of indigent Negroes are involved and only in such instances where they are deprived of said rights solely by reason of the fact that they are Negroes. In no instance will the proposed corporation make any charge or receive any compensation or remuneration from the individuals for whom funds for the retention of counsel are provided. The proposed corporation will not engage in any activities prohibited in said Section 280 of the Penal Law and its activities will be restricted solely to those hereinabove set forth and those set forth in paragraph "Second", subdivision (b), (c), and (d) of the Certificate of Incorporation.

Its proposed activities will not be restricted to the State of New York, but it intends functioning for the aforementioned purposes throughout the various States of the United States and the District of Columbia.

WHEREFORE, your deponent respectfully prays that this Court approve the Certificate of Incorporation of "N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC."

/s/ _____
ARTHUR B. SPINGARN

Sworn to before me this
2nd day of November, 1939
H.H. ZAND, Notary Public
Kings County; N.Y. County

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
(under Section 803 of the Not-For-Profit Corporation Law)

Pursuant to the provisions of Section 803 of the Not-For-Profit Corporation Law, the undersigned, being the President and Secretary, respectively, of N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC., hereby certify:

FIRST: That the name of the corporation is N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC., (hereinafter the "Corporation").

SECOND: That the Certificate of Incorporation of the Corporation was filed with the Department of State, Albany, New York, on the 20th day of March, 1940.

THIRD: That the Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law; that the Corporation is a type B corporation under Section 201 of the Not-For-Profit Corporation Law and shall continue to be a type B corporation hereafter.

FOURTH: That the post office address to which the Secretary of State shall mail a copy of any notice required by law is N.A.A.C.P. LEGAL DEFENSE AND EDUCTIONAL FUND, INC., 10 Columbus Circle, New York, New York 10019.

FIFTH: That the amendment to the Certificate of Incorporation effected by this Certificate is as follows:

Paragraph Second (d) of the Certificate of Incorporation, relating to the purposes of the Corporation, is hereby amended to read as follows:

> "(d) The corporation shall not engage in any activities for the purpose of carrying on propaganda, or otherwise attempting to influence legislation, and shall operate without pecuniary benefit to its members. The corporation is not organized, and shall not be conducted, for pecuniary profit. The property, assets, profits and net income of the Corporation are irrevocably dedicated to charitable and educational purposes and no part of the profits, net income or assets of the Corporation shall be distributable to nor ever inure to the benefit of any director, officer or member thereof or any other private shareholder or persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its purposes. Upon the dissolution of the corporation or the winding up of its affairs, none of the property or assets of the corporation shall be made available in any way to any individual, corporation or other organization, except to corporations or other organizations located within the United States which qualify as exempt from Federal income tax under section 501(a) of the Internal Revenue Code of 1954, as the same may be from time to time amended (the "Code"), as an organization described in Section 501(c)(3) of the Code, subject to the applicable provisions of the Not-For-Profit Corporation Law of the State of New York at the time in effect, including approval, if required, by a justice of the Supreme Court of the appropriate judicial district."

SIXTH: That the above amendment to the Certificate of Incorporation was authorized by a vote of a majority of the members entitled to vote thereon at a meeting of the members.

IN WITNESS WHEREOF, we have subscribed and acknowledged this Certificate this 31st day of January, 1972.

/S/ _____
WILLIAM T. COLEMAN, JR.,
President

/s/ _____
DR. GEORGE D. CANNON,
Secretary

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

Dr. George D. Cannon, being duly sworn deposes and says that he is the Secretary of N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC., the corporation mentioned and described in the foregoing instrument; that he has read and signed the same and that the statements contained therein are true.

/s/ _____
DR. GEORGE D. CANNON

Sworn to before me this 31st
day of January, 1972.

/s/ _____
GLORIA A. JONES
Notary Public

SUPREME COURT: NEW YORK COUNTY

IN THE MATTER OF THE APPLICATION
FOR THE APPROVAL OF THE CERTIFICATE
OF AMENDMENT OF THE CERTIFICATE OF
INCORPORATION

OF

N.A.A.C.P. LEGAL DEFENSE AND
EDUCATIONAL FUND, INC.
PURSUANT TO SECTION 804 OF THE NOT-FOR-PROFIT
CORPORATION LAW.

APPROVAL

I, ABRAHAM J. GELLINOFF, a Justice of the Supreme Court of the State of New York in the First Judicial District wherein the principal office of N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC., is located, do hereby approve the within Certificate of Amendment of the Certificate of Incorporation of N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

/s/ Abraham J. Gellinoff
JUSTICE OF THE SUPREME COURT

NOTICE OF APPLICATION WAIVED.
(THIS IS NOT TO BE DEEMED AN APPROVAL
ON BEHALF OF ANY DEPARTMENT OR AGENCY
OF THE STATE OF NEW YORK, NOR AN
AUTHORIZATION OF ACTIVITIES OTHERWISE
PROHIBITED BY LAW.)

DATED: MARCH 2, 1972
[Illegible]
Attorney General

BY /s/ [Illegible]
ASSISTANT ATTORNEY GENERAL

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
(under Section 803 of the Not-For-Profit Corporation Law)

State of New York
Department of State
Filed Mar 23 1972

APPELLATE DIVISION OF THE SUPREME COURT
FIRST JUDICIAL DEPARTMENT

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the City and County of New York, on the 20th day of June, 1974.

Present: Hon. Owen McGivern, Presiding Justice
Hon. Arthur Markewich,
Hon. Emilio Nunez
Hon. Theodore R. Kupferman
Hon. Francis T. Murphy, Justices

IN THE MATTER OF THE
APPLICATION FOR THE EXTENSION OF
APPROVAL OF THE N.A.A.C.P. LEGAL
DEFENSE AND EDUCATIONAL FUND, INC.

ORDER

Upon reading and filing the petition of the N.A.A.C.P. Legal Defense and Educational Fund, Inc. for extension of approval of the organization, verified the 17th day of April, 1974, by Jack Greenberg, its Director-Counsel, and the verified petition filed April 14, 1971, and upon reading and filing the reports of the activities of the said organization submitted in 1971, 1972, 1973 and 1974, and upon motion of said petitioner and due deliberation having been had thereon, it is

ORDERED, that the petitioner's application for an extension of approval of the existence of the N.A.A.C.P. Legal Defense and Educational Fund, Inc., heretofore granted by order of this Court dated March 15, 1940, be and the same hereby is granted subject to the terms of this Order; and it is further

ORDERED, that the existence, organization and incorporation of the N.A.A.C.P. Legal Defense and Educational Fund, Inc. for the purpose of providing legal services in the area of civil rights and poverty law as described in the verified petition of the director-counsel, the certificate of

incorporation, and the report submitted pursuant to Section 608.8 of the rules of this Court, be and the same is, approved pursuant to the requirements of Section 495 of the Judiciary Laws of the State of New York, further

ORDERED, that the duration of the approval of the N.A.A.C.P. Legal Defense and Educational Fund, Inc. shall be for an indefinite period subject to the provisions of the rules of this Court, and it is further

ORDERED, that in accordance with Section 608.6 of the Rules of this Court the requirements thereof with respect to the membership of the governing board shall not apply to this Corporation which was heretofore organized and approved, and further

WHEREAS, it appears from the record and petition of the corporation that it is sometimes necessary and appropriate to accomplish the purposes of the corporation for it to furnish legal services to other corporations, associations or organizations, including civil rights groups, political groups, factions or parties, where, for example, it is alleged that such groups are suffering legal deprivation by reason of race or color or in violation of other constitutional or legal guarantees, and it appearing to the Court that such litigational activities of the corporation may be constitutionally protected forms of free speech and association, and the Court desiring to construe and apply its rules consistently with such constitutional protections, it is

ORDERED, that the prohibitions of Section 608.7(b) and (c) shall not apply to the N.A.A.C.P. Legal Defense and Educational Fund, Inc., provided, however, that the corporation shall continue to comply with the provisions of its charter prohibiting engaging in propaganda or otherwise attempting to influence legislation and shall continue to comply with the laws relating to tax exempt organizations prohibiting intervention in political campaigns on behalf of candidates and lobbying to influence legislation, and further

WHEREAS, the N.A.A.C.P. Legal Defense and Educational Fund, Inc. is dependent upon receiving financial support from the general public and conducts substantial fund solicitation efforts to support the work of the organization, and is required in connection therewith to give public notice

of the litigation program which it conducts and to advertise its programs and accomplishments, and, furthermore, whereas the purposes of the corporation as stated in its articles of incorporation include compiling and publishing facts, information and statistics concerning educational facilities and opportunities for Negroes and the status of the Negro in American life, and further, whereas the proper conduct of the corporation's programs to eliminate racial discrimination may require that the organization give notice of the availability of its services to persons who may receive such services, and such publications are constitutionally protected forms of free expression, now, therefore, it is

ORDERED, that the N.A.A.C.P. Legal Defense and Educational Fund, Inc. may publish, distribute and disseminate information of the nature of the services it renders, and it is further

ORDERED, that the N.A.A.C.P.Legal Defense and Educational Fund, Inc. shall continue to comply with the provisions of its charter that it provide legal services gratuitously and without fee, except that the corporation may receive counsel fees awarded to it by a court of competent jurisdiction (as, for example, authorized by Congress in various civil rights laws such as the Civil Rights Act of 1964 and 1968), and further provided that nothing herein shall prevent the said corporation from furnishing supplementary legal or financial assistance or aid in cases where private attorneys (not members of the Fund's staff) have an attorney-client relationship which may include a fee arrangement, and it is further

ORDERED, that the N.A.A.C.P. Legal Defense and Educational Fund, Inc. may refer persons requiring legal services involving the general categories of civil rights issues which comprise its litigation program to any attorneys who may desire to cooperate with the organization in the conduct of its work, or to other civil rights organizations, legal aid societies, legal service programs or organizations approved by this Court, and provided that persons requesting assistance not within the scope of the Fund's work may be referred to any approved legal aid or legal services

program or to any duly maintained and authorized referral service, and it is further

ORDERED, that the annual reports of the N.A.A.C.P. Legal Defense and Educational Fund, Inc., filed pursuant to the requirements of Section 608.8 of the Rules of this Court shall be kept confidential by the Clerk of Court subject to the power of the Court to permit disclosure upon good cause shown and after notice to the reporting organization.

Dated: New York, New York
April ____, 1974.

ENTER FOR THE COURT
/s/ [Illegible]
Presiding Justice

Associate Justices

[Filed Jun 20 1974]

At a term of the Appellate Division, First Judicial Department, Supreme Court, State of New York, held at the Courthouse, 27 Madison Avenue, New York, New York, on March 24, 1977.

Filed MARCH 24, 1977

PRESENT:

Hon. HAROLD A. STEVENS, *Presiding Justice*
Hon. THEODORE R. KUPFERMAN
Hon. FRANCIS T. MURPHY, JR.
Hon. VINCENT A. LUPIANO
Hon. HAROLD BIRNS, *Justices*

In the Matter of the

APPLICATION FOR MODIFICATION OF THE CERTIFICATE OF INCORPORATION OF THE N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

ORDER

Upon reading and filing the petition of the N.A.A.C.P. Legal Defense and Educational Fund, Inc. for modification of its Certificate of Incorporation, verified the 10th day of November, 1976, by Jack Greenberg, the Director-Counsel of petitioner, and upon motion of said petition and due deliberation having been had thereon, it is

ORDERED, that the application of petitioner for modification of its Certification of Incorporation by increasing the authorized number of members of the petitioner's Board of Directors to 100 is granted.

ENTER
FOR THE COURT
/s/ Harold A. Stevens
HAROLD A. STEVENS
Presiding Justice

At a Term of the Appellate Division of the Supreme Court, held in and for the First Department, at the Courthouse thereof, in the County of New York on the 24th day of March, 1976.

Filed MARCH 24, 1976

PRESENT:

HAROLD A. STEVENS, *Presiding Justice*
ARTHUR MARKEWICH,
THEODORE R. KUPFERMAN,
FRANCIS T. MURPHY, JR.,
VINCENT A. LUPIANO, *Justices.*

In The Matter of the

APPLICATION OF MODIFICATION OF THE CERTIFICATE OF INCORPORATION OF THE N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

ORDER

Upon reading and filing the petition of the N.A.A.C.P. Legal Defense and Educational Fund, Inc. for modification of its Certificate of Incorporation, verified the 29th day of January, 1976, by Jack Greenberg the Director-Counsel of petitioner, and upon motion of said petition and due deliberation having been had thereon, it is

ORDERED, that the application of petitioner for modification of its Certificate of Incorporation by addition of the phrase "(except that in California the Corporation's property, assets, profits and net income are irrevocably dedicated to charitable purposes within the meaning of Sec. 214 of the California Revenue and Taxation Code)," to the third

sentence of Paragraph Second (d) of petitioner's Certificate of Incorporation is granted.

ENTER
FOR THE COURT
/s/ Harold A. Stevens
HAROLD A. STEVENS
Presiding Justice

Dated: New York, New York
MARCH 24, 1976.

APPELLATE DIVISION OF THE SUPREME COURT
FIRST JUDICIAL DEPARTMENT

PRESENT:

Hon. FRANCIS T. MURPHY, *Presiding Justice*
Hon. THEODORE R. KUPFERMAN,
Hon. VINCENT A. LUPIANO,
Hon. HAROLD BIRNS,
Hon. SAMUEL J. SILVERMAN, *Justices.*

In The Matter of the

APPLICATION FOR MODIFICATION OF THE CERTIFICATE OF INCORPORATION OF THE N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

ORDER

[Filed June 8, 1977]

Upon reading and filing the petition of the N.A.A.C.P. Legal Defense and Educational Fund, Inc. for Modification of its Certificate of Incorporation, verified the 13th day of May, 1977, by Jack Greenberg, the Director-Counsel of petitioner, and upon motion of said petition and due deliberation having been had thereon, it is

ORDERED, that the application of petitioner for modification of its Certificate of Incorporation by adding the phrase "to an extent that would disqualify it for tax exemption under § 501(c)(3) of the Code" to the first sentence of ¶ 2(d) is granted.

ENTER
FOR THE COURT
/s/ Francis T. Murphy
FRANCIS T. MURPHY
Presiding Justice

Dated: New York, New York
JUNE 8, 1977

EXHIBIT "B"
INTERNAL REVENUE DOCUMENTS
TREASURY DEPARTMENT
WASHINGTON

April 30, 1940

N.A.A.C.P. Legal Defense and Educational Fund, Inc.,
69 Fifth Avenue,
New York, New York

Sirs:

Reference is made to the evidence submitted by you in support of your claim to exemption from Federal income taxation.

The evidence shows that you were incorporated March 20, 1940, under the Membership Corporations Law of the State of New York for the purposes generally of rendering legal aid gratuitously to worthy indigent Negroes suffering legal injustice by reason of race or color; promoting educational facilities for Negroes; and conducting research, and compiling and publishing facts and statistics concerning educational facilities and opportunities for Negroes. Your certificate of incorporation specifically provides that you shall not engage in any activities for the purpose of carrying on propaganda or otherwise attempting to influence Legislation and shall operate without pecuniary profit to your members.

The affidavit submitted to the Appellate Division of the Supreme Court of the State of New York for the purpose of obtaining its approval to your certificate of incorporation to be filed with the Secretary of State of the State of New York sets forth, among other things, that you intend to furnish funds for the purpose of engaging the services of an attorney or attorneys (a) to institute or defend legal actions in such cases where constitutional rights of indigent Negroes are involved; (b) to institute and defend such actions as will protect the rights of Negro citizens to vote, in order that such rights shall not be denied or abridged by the United States or by any State on account of race or color; (c) to secure to indigent Negroes the right to a fair and impartial jury trial; and (d) to maintain such legal actions as

may be necessary to contest any laws which tend to abridge the privileges or immunities of Negro citizens of the United States guaranteed by the Federal and the several State Constitutions.

Based upon the evidence submitted, it is held that you are entitled to exemption under the provisions of section 101(6) of the Internal Revenue Code (53 Stat., Part 1). You are not, therefore, required to file a return of income for 1940, and future returns will not be required so long as there is no change in your form of organization or method of operation.

If, however, your activities are not confined solely to carrying out the purposes as shown in your certificate of incorporation, if your income is not used exclusively for those purposes, or if any changes are made in your form of organization or method of operation, as shown by the evidence submitted, these facts should be immediately reported to the collector of internal revenue for your district, in order that the effect of such changes upon your present exempt status may be determined.

The exemption referred to in this letter does not apply to taxes levied under other titles or provisions of the Internal Revenue Code, except insofar as exemption is granted expressly under those provisions to organizations enumerated in section 101.

Contributions made to you by individual donors are deductible by such individuals in arriving at their taxable net income in the manner and to the extent provided by section 23(o) of the Internal Revenue Code, as amended by section 224 of the Revenue Act of 1939. The deductibility of contributions by corporations is governed by section 23(q) of the Internal Revenue Code, as amended by section 224 of the Revenue Act of 1939.

A copy of this letter is being transmitted to the collector of internal revenue for your district.

By direction of the Commissioner.

Respectfully,

/s/ . . Sherwood
Acting Deputy Commissioner

DEPARTMENT OF THE TREASURY
DISTRICT DIRECTOR
INTERNAL REVENUE SERVICE

October 26, 1973

N.A.A.C.P. Legal Defense and Educational Fund, Inc.
10 Columbus Circle
New York, New York 10019

Year(s) Activities Examined: 1971
Year(s) Form 990-T Examined:

Gentlemen:

After reviewing your activities and examining your financial records for the above year(s), we find that your Federal tax-exempt status continues. The return(s) for the year(s) indicated are accepted as filed.

Thank you for your cooperation.

SINCERELY YOURS,
DISTRICT DIRECTOR

DEPARTMENT OF THE TREASURY
DISTRICT DIRECTOR
INTERNAL REVENUE SERVICE

December 11, 1974

NAACP Legal Defense and Educational Fund, Inc.
10 Columbus Circle
New York, New York 10019

Gentlemen:

Reference is made to the December 9, 1974 letter from the firm of Paul, Weiss, Rifkind, Wharton and Garrison requesting verification of the Foundation status of your organization.

Our records indicate that the NAACP Legal Defense and Educational Fund, Inc., has been classified as an organization that is not a private foundation as defined in section 509(a) of the Internal Revenue Code because it is an organization described in section 509(a)(1) of the Code.

Very truly yours,
/s/ Milton G. Vodmann
MILTON G. VODMANN
Group Manager, Exempt Organizations

cc:
Adrian W. DeWind, Esq.
Paul, Weiss, Rifkind,
Wharton & Garrison
345 Park Avenue
New York, New York 10022

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

February 22, 1974

NAACP Legal Defense & Educational Fund, Inc.
10 Columbus Circle Suite 2030
New York, N.Y. 10019

Dear Sir:

Although contributions to your organization are deductible for Federal income tax purposes under section 170(c) of the Internal Revenue Code, we unintentionally omitted its name in the cumulative list of such organizations in Publication 78 (1-74), revised to October 31, 1973.

We will correct our error by including your organization's name in the quarterly supplement of Publication 78 that is due for issuance in April of this year.

We regret any inconvenience this may have caused you. If you have any questions, please contact the person named above.

Sincerely yours,
/s/ R. J. McCauley
R. J. MCCAULEY
Chief, Exempt Organization
Examination Branch

EXHIBIT "C"—DOCKET REPORT

N.A.A.C.P. LEGAL DEFENSE
AND EDUCATIONAL FUND, INC.
DOCKET REPORT
MARCH, 1980
[excerpts]

12—FEDERAL EMPLOYMENT

52—ALABAMA

86 *Jones* v. *Alexander*, S.D. Ala., Civ. Action No. 74-462-H (J.U. Blacksher; M. Baller; Bill Lee).

Suit under Title VII, alleging across-the-board discrimination by Army Corps. of Engineers, Mobile District. See also *McLaughlin* v. *Calloway*, *infra*. Jones, an architect denied promotion by Corps. sought to intervene in *McLaughlin* case. Upon denial of intervention, Jones sued in Nov. 1974. The district court initially refused to hear the case as related to *McLaughlin*. A motion to recuse Judge Hand for bias was denied and affirmed by the Fifth Circuit. In 1977, after the Fifth Circuit reversed the denial of class action consideration in *McLaughlin*, Mr. Jones' action was consolidated with the *McLaughlin* case.

ISSUES: Class action

CURRENT STATUS: Consolidated with *McLaughlin* v. *Alexander*. Trial set for November 1979.

87 *McLaughlin* v. *Alexander*, S.D. Ala., Civ. Action No. 74-123-P (J.U. Blacksher; Bill Lee).

Across-the-board Title VII action alleging racial discrimination in federal employment by Army Corps of Engineers, Mobile District. Plaintiff, a rejected applicant, sought to raise hiring, recruitment, classification, assignment, and promotion claims. Filed March 28, 1974. Court entered orders in Sept.-Nov. 1974: (1) denying trial de novo; (2) denying class action status; (3) denying class-wide discovery. The district court, however, ruled that Mr. McLaughlin prevailed on his individual claim. In 1977, the Fifth Circuit reversed the lower court, and ordered that plaintiffs were entitled to a trial *de novo*, to move for class certification and to engage in pretrial discovery. Plaintiffs

seek to correct discrimination at a variety of Corps of Engineer facilities in several states covered by the Mobile District. The parties are engaging in discovery for an evindentiary hearing on class certification.

On remand, the district court reconfirmed the class action certification and consolidated the case of several additional Corps of Engineers cases filed throughout the southern district of the Corps, including *Jones* v. *Alexander*, with *McLaughlin*. Case is now scheduled for trial.

ISSUES: Hiring, job assignment and promotions.

CURRENT STATUS: The case is now scheduled for trial in November 1979.

04—ARKANSAS

02 *Goldman* v. *Calloway*, E.D. Ark., Civ. Action No. PB-75-C-36 (Eugene Hunt, Ron Ellis).

This suit is against the Pine Bluff Arsenal, which employs about 1000 persons (1/3 black). Blacks typically predominate in wage grade jobs as laborers even some with college degrees. Middle and upper management (most G.S. jobs) are held almost exclusively by whites. WRF Grant.

ISSUES:

CURRENT STATUS: Awaiting pre-trial date.

05 *Perry* v. *Alexander*, E.D. Ark., Civil Action No. H-C-78-16 (Jimmie Wilson; Ron Ellis).

Filed as class action against Memphis district Corps of Engineers. Thirty-two black employees discharged for protesting working conditions. Investigation reveals blacks assigned to lowest job-revetment. Whites given better jobs, trained for advancement.

ISSUES: Discharge, Assignment, Promotions.

CURRENT STATUS: In discovery. First interrogatories answered.

03 *Smith* v. *Klassen*, E.D. Ark., Civ. Action LR-73-C-107 (Les Hollingsworth, Ron Ellis).

ISSUES: This case challenges the subjective promotional practices of the U.S. Postal Service in Little Rock. Very few blacks hold promotions at grade 10 or above. WRF Grant.

CURRENT STATUS: Awaiting class action ruling.

01 *Watson* v. *Calloway*, Ark., Civ. Action No (John Walker, Ron Ellis).

Action challenges the exclusion of Blacks from membership in any selection for technical jobs in Arkansas Army National Guard. Only 10 of 921 technicians are minorities. WRF Grant.

ISSUES:

CURRENT STATUS; In discovery.

04 *Williams* v. *Califano*, E.D. Ark.—Pine Bluff, Civ. Action No. PN-76-C-161 (Eugene Hunt, Ron Ellis).

The National Center for Toxicological Research was taken over by HEW from the Army in 1971. There are 500 employees. The installation contracts with the University of Arkansas Medical Center for Laboratory services and with some private businesses for supportive services. This action challenges hiring, assignment and promotional practices. WRF Grant.

ISSUES:

CURRENT STATUS: In discovery.

05—CALIFORNIA

05 *Saunders* v. *Claytor*, 9th Cir. (Howard Moore; S. Ralston).

Government appeal from good aard of back pay and inflaction factor and counsel fees.

ISSUES:

CURRENT STATUS: Fully briefed, waiting argument.

09—DISTRICT OF COLUMBIA

75 *Barrett* v. *Civil Service Commission*, U.S.D.C., Civ. Action No. 74-1694 (Elaine R. Jones, C.S. Ralston, G. Wright).

Action against the Civil Service Commission to compel federal agencies to accept, process and dispose of individual complaint of unlawful discrimination against federal agencies as class actions. Also, an action against the Johnson Space Flight Center, in behalf of incumbent black

employees to eliminate obstacles to minority advancement within that installation. The first issue was resolved in our favor—69 F.R.D. 554.

ISSUES: Whether Civil Service Commission must process individual complaints as class actions. Whether Johnson Space Flight Center discriminates against blacks in promotions.

CURRENT STATUS: Settlement on class issues approved June 4, 1979. Still to be resolved are individual claims and counsel fees.

04 *Harrison* v. *Maritime Administration*, U.S. Civil Service Commission, Civ. Action No. 003 (Valerie V. Ambler; Charles Stephen Ralston).

Class action administrative complaint filed under new CSC regulations on behalf of Blacks and women employees of Maritime Administration Hdq., in Washington, D.C. Attacks discrimination in hiring, promotion, supervisory ratings, etc.

ISSUES: Across the board attack on employment practices.

CURRENT STATUS: Administrative process exhausted; complaint to be filed in district court. (Class certified, discovery proceeding.

09—DISTRICT OF COLUMBIA (cont'd)

03 *Luevano* v. *Campbell*, D.D.C., Civil Action No. 79-0271 (Jolin Borscon, Alice Beasley, Richard Seymour, Mike Baller, Eva Patterson, Russell Galloway, C.S. Ralston, Gail J. Wright, Barry L. Goldstein, Patrick O. Patterson).

Title VII action challenging the PACE Exam, the chief entry level exam for professional, administrative and technical positions in the federal government.

ISSUES: Whether test has adverse impact and is validated under current guidelines.

CURRENT STATUS: Near settlement.

05 *Nelson* v. *Campbell*, D.D.C., Civ. Action No. 77-2129 (Valerie v. Ambler; Percy Julian; Charles Stephen Ralston).

Action under Title VII and Equal Pay Act on behalf of woman employee of Dept. of Agriculture. LDF involvement limited to challenge to deficiencies in CSC regulations that bar, on procedural grounds ("not within purview" rules), a challenge on the merits to classifications.

ISSUES: Legality of CSC regulations that interfere with processing of EEO complaints.

CURRENT STATUS: Case settled by means of limiting interpretations of the regulations in question. Motion for counsel fees pending.

10 *Smith* v. *Califano*, D.D.C., Civ. Action No. 76-2311 (Roma Stewart, Bill L. Lee).

This is a federal Title VII action in which LDF filed an *amicus curiae* brief in support of a black federal employee's request for an award of attorneys' fees in administrative Title VII proceedings. Plaintiff Smith recovered backpay and retroactive promotion, but was denied fees. The lawsuit was filed to recover fees. In January 1978, the district court decided that the agency was required to grant fees. 446 F. Supp. 530 (D.D.C. 1978). The government, however, has failed to come up with procedures, and no fees award has been determined.

ISSUES: Attorney's fees.

CURRENT STATUS: Attorneys' fees pending.

04—FLORIDA

84 *Griffin* v. *United States Postal Service*. M.D. Fla., Civ. Action No. 72-487 Civ.-J.T. (W.B. Kyle, G. Wright,).

Complaint filed July 7, 1972 alleging that Jacksonville Post Office discriminates against black postal workers in promotional practices and disciplinary procedures. Defendant's assignment, motion to dismiss concerning class action, certification, and timeliness of the complaint are pending. Because of lack of judicial manpower and retirements, this case remained inactive for several years. In January 1978

the action was assigned to a newly-appointed federal district judge. Due to new developments in the law, the court ordered filing of supplemental briefs. All arguments were heard in October and November of 1979. Supplemental complaint filed subsequent to plaintiff's discharge in December 1976.

ISSUES: Assignment, promotion, discipline, harassment and discharge.

CURRENT STATUS: Motion to Dismiss pending decision.

86 *Moran* v. *Naval Air Station*, M.D. Fla, Civ. Action No. 73-702-Civ.-J-S (E. Johnson; W. Kyle; Clyde Murphy).

Class action. Discriminatory assignments and promotion methods; written tests; unequal pay for same work. Relief: Declaratory judgment, injunction, affirmative action. Briefs have been submitted and argument has been held on defendants' renewed motion for summary judgment.

ISSUES:

CURRENT STATUS: Defendants renewed motions to dismiss, for summary judgment and to dismiss nonperfecting named plaintiffs denied. Discovery reopened, however several motions re: discovery are pending. Hearing on class actions status also pending.

11—GEORGIA

01 *Howard* v. *McLucas*, M.D. Ga., Civ. Action No. 75-168-Mac (B. Turner, Bill Lee).

This across-the-board attack on racial discrimination in employment practices at the Robins Air Force Base near Macon, Georgia was filed October 1975. The complaint alleges, *inter alia*, that only 4% of GS employees are black and that black employees are disproportionately underrepresented at high level jobs and overrepresented at low level jobs. In 1976, the district court resolved various procedural and jurisdictional issues in favor of permitting

plaintiffs to proceed with discovery and prepare for a trial *de novo*. The court also certified the case as a class action composed of black employees and applicants for employment. Because the class of black employees and applicants is provisionally defined as at least 3,500 incumbent employees, the discovery process, including computer has been onerous discovery.

ISSUES: Promotion; hiring; job assignment.

CURRENT STATUS: This case is now in discovery.

03 *Maddox* v. *Claytor*, M.D. Ga., Civil Action No. 78-2-ALB (Herbert Phipps, C.B. King, Bill Lann Lee, G. Wright).

This is a federal Title VII action against the Marine Corps logistics Support Base in Albany, Georgia filed in January 1978. The case is brought on behalf of about 400 black employees and an indefinite number of applicants and concerns hiring, promotion to higher level jobs, job assignment and disparate treatment. Black employees have generally been closed out of upper level jobs, supervisory positions and white collar categories, and, instead, are relegated to low-level blue collar occupations.

ISSUES: Promotions, hiring, job assignment, disparate treatment.

CURRENT STATUS: In discovery, class action certification granted December, 1979. Defendants have filed for reconsideration.

14—ILLINOIS

01 *Thompson* v. *Roudebush*, N.D. Ill, Civ. Action No. 74-C-3719 (M. Miner; Bill Lee).

This Title VII action concerns classwide policies and patterns of discrimination at a Veterans Administration hospital in Chicago. The action has been certified as a class action and is ready for trial.

ISSUES: Promotions; job assignments.

CURRENT STATUS: Trial won on the merits in 1979. Counsel fees awarded.

22—MASSACHUSETTS

02 *Bradley K. Beasley* v. *William Griffen, et al.*, Dist. Mass. (Jonathan Shapiro, Anne Goldstein, Gail J. Wright).

Lawsuit instituted on January 13, 1975 alleging racial discrimination with respect to promotions; reliance on non-job related tests and criteria including Federal Service Entrance Examination (FSEE); complaint amended on March, 1976 to include recruitment, hiring, job placement and assignments.

ISSUES:

CURRENT STATUS; Settlement agreement formulated to include general declaratory, injunction and affirmative relief. Retroactive hiring and promotions; and back pay awards to class members. Counsel fee application filed.

24—MINNESOTA

01 *Nelson* v. *Bergland*, U.S.D.C., Civ. Action No. 6-78-10 (Valerie V. Ambler, Percy L. Julian, Delores Orey, Charles S. Ralston).

Action under Title VII and Equal Pay Act on behalf of woman employee of Dept. of Agriculture who alleges she has been classified lower than men doing the same work.

ISSUES:

CURRENT STATUS: Settled. Counsel fees being negotiated.

25—MISSISSIPPI

01 *Stubbs* v. *Middendorf*, S.D. Miss., Civ. Action No. S-76-178(C) (J. Hudson; Bill Lee).

This is an across-the-board federal Title VII action brought against the U.S. Naval Construction Battalion Center in Gulfport, Mississipi. Mr. Stubbs is a black employee in Supply Department who was denied a promotion that went to a white employee who was a relative of the supervisor. The Center has principally confined black blue collar employees to the Supply and one other department, and to low-level, low-paying jobs. There are almost no black white-collar employees in 1977, the lower court denied a motion for class certification, and an appeal was taken to the Fifth Circuit.

The appeal was voluntarily dismissed after intervening Supreme Court decision removed any basis for appeal jurisdiction. Trial preparation is underway, as is an effort to have the court reconsider the denial of a class action.

ISSUES: Promotions; job assignment; hiring; discipline.

CURRENT STATUS: Tried. Unfavorable ruling Feb., 1979.

34—NORTH CAROLINA

83 *Chisholm* v. *United States Postal Service*, W.D.N.C., Civ. Action No. C-C-73-148 (J. Wallas; Bill Lee).

Class action involving across-the-board promotional issues at Charlotte, N.C. Post Office. On May 29, 1975, Judge MacMillan ruled that (1) a trial de novo was required, (2) a class action could be maintained, and (3) intervention by employees who had not exhausted administrative remedies would be allowed. Judge MacMillan also certified these questions appropriate for an interlocutory appeal to the Fourth Circuit. Late in 1977, the Fourth Circuit granted the motion to dismiss the apeal in light of the government's withdrawal of its position against class action certification and intervention. The Supreme Court in 1976 had ruled in favor of trials *de novo* in *Chandler* v. *Roudebush*, in which LDF was amicus.

The case was tried in August 1979. The court ruled from the bench that plaintiffs had prevailed on all issues, *i.e.*, promotion to higher level and supervisory jobs, initial level supervisory tests, details and disparate discipline. The court requested that the parties negotiate as to relief in light of the preliminary ruling. Otherwise, the court would write an opinion and impose relief.

ISSUES: Promotions to supervisory and upper level jobs, details, discipline.

CURRENT STATUS: Pending on relief.

81 *Mackey* v. *Stetson*, W.D.N.C., Civ. Action No. C-C-77-124 Louis L. Lesesne, Jr. Bill L. Lee).

This federal Title VII class action was brought by a black civilian employee and an applicant for employment at the

North Carolina Air National Guard. The action concerns across-the-board patterns and policies of racial discrimination in employment, but principally deals with discriminatory hiring and promotion policies. The district court denied defendant's objections to our discovery requests in December 1977, and discovery is in process.

ISSUES: Hiring, promotions, job assignments.

CURRENT STATUS: In discovery.

37—OKLAHOMA

01 *Salone* v. *United States*, [. . .] Civ. Action No. [. . .] (S. Ralston)

Appeal from denial of full back pay and attorneys fees.

ISSUES:

CURRENT STATUS: To be briefed.

43—TENNESSEE

01 *Williams* v. *Tennessee Valley Authority*, M.D. Tenn., Civ. Action No. 75-186 (A. Williams; S. Ralston).

This is an across-the-board attack on hiring and other policies of T.V.A. installations in Tennessee. The District Court held that plaintiffs were entitled to a trial *de novo* and a class action; affirmed by the Sixth Circuit.

ISSUES: Hiring and promotion policies for blue collar workers at T.V.A. installations.

CURRENT STATUS: Pending class action determination in the District Court.

44—TEXAS

79 *Lewis* v. *NLRB*, S.D. Tex., Civ. Action No. 76-H-70 (M. McDonald; Gail J. Wright).

This is a federal Title VII action against the regional offices of the National Labor Relations Board for discrimination on the basis of race against black professional employees, including attorneys and field examiners. The named plaintiffs, a black field examiner, employed by the NLRB Houston regional office was denied a promotion due to the NLRB's limitation on the number of middle level staff, al-

though similarly situated white employees have been promoted. This suit followed in 1976. In 1977, the lower court denied objections to classwide discovery. In September, 1979, the court certified nationwide class action to include all past and present Black field examiners, field attorneys.

ISSUES: Hiring; job assignment; promotions; discipline; retaliation.

CURRENT STATUS: Nationwide class certified. Discovery in progress.

47—VIRGINIA

44 *Simmons* v. *Brown*, E.D. Va., Civ. Action No. 74-0268-R (H. Marsh; R. Johnson; Gail J. Wright).

This across-the-board attack on racial discrimination in employment practices at the Norfolk Naval Air Rework Facility under Title VII was filed June 1974. The district court granted a trial de novo but denied the class action and broad discovery. A decision against the named plaintiffs on their individual claims was issued July 1975. An appeal was taken on issues (1) class action; (2) discovery; and (3) merits of individual claims.

In December 1976, the Fourth Circuit ruled against plaintiffs on the appeal. On a petition for rehearing, the government changed its position on class actions twice and eventually confessed error and joined in plaintiffs' request that the case be sent back to the lower court. Thereafter, in October, 1977, the Fourth circuit vacated its prior adverse decision on class action certification and discovery. The adverse decision on the individual claims was to remain in effect pending further proof and result of further discovery and trial proceedings.

On remand, plaintiffs conducted class wide discovery and filed a motion to certify a class. In May, 1979 the district court declined to consider whether the requirements of Rule 23 had been met on the grounds that the named plaintiffs had failed to move to have their individual claims reconsidered. Plaintiffs filed a second appeal on the issue and oral argument was heard before the Fourth Circuit in June, 1978.

ISSUES: Class Action, Promotion, assignment.

CURRENT STATUS: December, 1979 reversal by Fourth Circuit, remanded for identification of new class representatives.

VI. 14—EQUALIZATION OF MUNICIPAL SERVICES

25—MISSISSIPPI

05 *Fredericks* v. *Kreps*, S.D. Miss., Civ. Action No. (Joe Hudson, Eric Schnapper).

Did rejection of grant application for storm drains in black neighborhood violate provisions of Public Works Act.

ISSUES:

CURRENT STATUS: Preliminary injunction denied, on appeal to the Fifth Circuit. Lost in Fifth Circuit.

VII. 20—HEALTH

33—NEW YORK

01 *Bryan* v. *Koch*, S.D.N.Y., Civ. Action No. (Ira Bezona, Beth Lief, O.P. Sherwood).

Class action on behalf of poor blacks and hispanics challenging continuation of cut-back and closings of municipal hospitals.

ISSUES: Whether City & HHC's attrition program and plans for closings of public hospital violates Title VI and Fourteenth Amendment.

CURRENT STATUS: Complaint field 8/15/79. Motion for class action status filed.

15—INDIANA

04 *Hatcher* v. *Methodist Hospital of Gary, Ind.*, U.S.D.C., N.D. Inc., Civ. Action No. 77-154 (J. Allen, B. Lief).

ISSUES:

CURRENT STATUS: Case against hospital settled for, *inter* alia: $20 million construction program to upgrade and expand black hospital, more black representation on Board of Directors, equality of staffing in numbers and training at both hospitals; all

new services to be put in Ga.. hospital; outreach program into black community for primary care, etc.

Motion for attorneys' fees to be filed shortly.

03 *Wesson* v. *Methodist Hospital of Gary, Indiana*, U.S.D.C., N.D. Ind. Civ. Action No. 76-373 (Julian Allen; B. Lief).

These class actions suits challenge the construction and expansion of a hospital in a suburban all-white town 15 miles south of Gary, Indiana, by Methodist Hospital of Gary, Inc., a corporation which has operated a hospital in Gary since 1923. The suit alleges that the construction of the hospital has had the purpose and effect of creating a segregated, discriminatory health care system that harms the minority and handicapped residents of Gary, a city which is 63% minority.

The suit also names local and state health agencies and HEW and charges them with violating Title VI of the Civil Rights Act by funding and approving the construction of the all-white hospital.

The complaint seeks not only to upgrade the inner-city facility but to force HEW to establish policies to prevent violtions by hospital facilities of title VI.

ISSUES: Whether construction and expansion of a "satellite" hospital in a white suburb by a corporation which has a hospital in aminority urban area violates Fourteenth Amendment and Title VI of Civil Right Act of 1964 and Section 504 of Rehabilitation Act of 1973 (discrim. against handicapped); whether funding by HEW of construction and expansion and failure to enforce civil rights acts violates HEW's obligation under Title VI and Section 504.

CURRENT STATUS: Motions to dismiss denied; motion to consolidate with *Hatcher* v. *Methodist Hospital* granted; class determination granted as to class of blacks; discovery complete. Trial scheduled for April 24, 1978.

VIII. 21—LAND USE

26—MISSOURI

01 *Citizens Environmental Council, et al.* v. *Coleman, et al*, W.D. Mo, Civ. Action 73-CV 349-W-1 (Kansas City

Legal Aid Society; James A. Kushner; J. Nelson Thompson; J. Gary).

Suit to prevent the South-Midtown Freeway from being constructed. The Freeway has disrupted Kansas City's racially integrated communities, isolated some black communities and dislocated many residents without adequate relocation provisions. After forcing defendants to prepare a proper environmental impact statement, (E.I.S.) the question of the adequacy and validty of said EIS is at issue as well as the relocation plans.

ISSUES:

CURRENT STATUS: Preparing for trial in July 1978.

1978-79 ANNUAL REPORT
NAACP LEGAL DEFENSE FUND

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INTRODUCTION

As the 1970's come to a close, the condition of black Americans, improved in some respects since the Civil Rights Movement of the 1960's, continues to be the nation's most urgent human rights concern. Indeed, one serious aspect of the problem is that some improvements have occurred, giving rise to belief that further national effort is not necessary. We have, therefore, entered a period of stagnation and regression with regard to civil rights. Because crime, welfare, decline of the cities, and a host of socially dislocating pathologies stem directly from the deprived condition of certain minorities—among whom blacks are most numerous—the issue is one for all Americans.

Black median income persists at the level of 60% of white median income. Black unemployment remains a steady double of white unemployment. Blacks are three times more likely to be below the poverty level as whites. While between 1968 and 1977 black males entered the managerial classes at a rate which has grown from 3.3% to 8.1%, and black families with two wage earners under age 35 living in the Northeast (under 6% of the black population) now earn about the same as whites, the unwavering median income statistic indicates that other blacks are doing worse than before.

Even though *Brown* v. *Board of Education* was decided in 1954, school integration did not really begin until 1970 when the Supreme Court stuck down the "deliberate speed" doctrine, and also announced principles which would require Northern school integration. In the past ten years, Southern rural and small town schools have become well integrated and Southern big city schools have been somewhat integrated. Elsewhere segregation is the norm. The growth of private schools and Supreme Court decisions which deny integration relief across school district boundaries, have limited change. Even more formidable an obstacle has been political opposition to school integration, expressed in innumerable HEW appropriation riders. Nevertheless, some encouraging indicators are a recent Rand Corporation study which demonstrates that school integration improves

academic achievement of black students, while having no particular effect on whites, and a Louis Harris survey which shows that while most whites oppose busing, and blacks are evenly divided, among both groups whose children have been bussed, the overwhelming view is that the experience was favorable. Further progress in integrating the great number of segregated schools can be achieved, but only with effort. Of course, housing segregation discussed below, is a formidable obstacle to changing the school picture.

As to higher education, gains in black enrollment are a function of (1) improved and integrated education at lower levels and (2) affirmative action. While the former is at a standstill, the latter has been threatened by "*Bakke*" type attacks. The Chronicle of Higher Education reports that while total college enrollments this year dropped 3.5%, the number of black students dropped 7.5%, and the number of Hispanics dropped 9.8%. Thomas Pettigrew in a recent report for the Rockefeller Foundation concluded that "there are numerous indications that the *Bakke* ruling has had some negative, though by no means crippling consequences ... Whether these effects will cumulate in time into a significant chilling effect must await further experience under *Bakke* and later, more intensive follow-up research."

On a variety of fronts—involving issues other than those referred to—great effort continues to be required to achieve educational equality.

Housing remains essentially racially segregated. The United States Commission on Civil Rights reports that "the decade of the 1960's did little to increase the similarity in residential location between the majority- and minority-headed households." Moreover, minority housing tends to be more overcrowded than white housing, and minorities disproportionately spend an excess percentage of their income for rent. The disparity was especially great for female-headed households and increased through the 1960's.

Employment, housing, education: this triad remains basic. No one of them can be meaningfully improved unless we correct the others at the same time. Following is a report on significant developments in the Legal Defense Fund program in 1978/79.

JULIUS LEVONNE CHAMBERS
President

JACK GREENBERG
Director-Counsel

October 1979

EMPLOYMENT DISCRIMINATION

LDF wins $5 Million in Back Pay for Black Workers

Over $5,000,000 has been distributed among thousands of black workers in settlements won by LDF between October 1978 and July 1979. The settlements came in 18 cases involving discrimination against black workers in employment policies and practices. No other organization can come close to this record. In addition to winning back wages, LDF has won for these and others much larger wages for the future, substantial changes in systems which perpetuated discrimination, modifications in hiring procedures. promotion and seniority systems, and working conditions which insure that blacks and other minorities be given equal job opportunity.

The 18 cases include settlement of suits against Norfolk and Western Railway and the United Transportation Union, Fieldcrest Mills and Scott Paper Company. In these three cases the courts awarded back pay in excess of $3,000,000. *Rock* v. *Norfolk and Western and the United Transportation Union* calls for payments of $1,125,000; *Gallaway* v. *Fieldcrest Mills*, $1,100,000 in back pay; *Watkins* v. *Scott Paper Co.*, $750,000 in back pay to present and former employees. These companies and unions were required to amend their seniority systems to end present discrimination to adjust the status of victims of past discrimination.

In a public employment case settlement, one Court approved $320,000 in back pay for police officers and fire fighters in *Tarner v. City of Houston*. The city must revise its standards of hiring to eliminate the disparate impact former employment standards had on minorities. In addition, all previously-rejected applicants have been invited to reapply and age limits are being waived to accomodate these applications. The settlement affects between 5,000 and 10,000 blacks denied employment in the past.

Recent settlements have been encouraging in the face of what appeared to be defeat in the Supreme Court's 1977 decision, *International Brotherhood of Teamsters* v. *U.S.* which required proof of "intent to discriminate" by an em-

ployer to establish that a seniority system is illegal. The limited effect of *Teamsters* is due to the careful preparation for, and selection of, cases by LDF staff. In LDF's case, *James* v. *Stockham Valves*, the U.S. Court of Appeals for the Fifth Circuit has clarified the discriminatory seniority issue and provided criteria for judging the validity of seniority systems. These include whether the system discourages all employees from transferring, whether seniority units are in the same or separate union bargaining units, whether the system had its genesis in racial discrimination, and whether it was negotiated and has been maintained free from any racial discrimination.

The equal employment litigation program—including over 200 active cases—continues to command the major portion of the resources of the Legal Defense Fund. In all during the past twelve months, LDF had 13 cases in various stages in the district courts and twenty-two in the courts of appeal; we will go to trial in district courts in five additional cases within the next two months. Two cases in which we filed *amicus curiae* briefs—*County of Los Angeles* v. *Davis and Kaiser Aluminum Co. v. Weber*—were decided in our favor by the U.S. Supreme Court.

Public Employment

Our policy of concentrating Title VII efforts in expanding industries carries over to the public employment field. Federal, state and local governments are among the nation's highest growth areas in terms of jobs. It is in government cases that we represent large numbers of "white collar" workers, although some also involve "blue collar" jobs. We are proceeding with class actions involving such diverse agencies as regional offices of the National Labor Relations Boards nationwide, the Washington headquarters of the Maritime Administration, Naval Air Rework Facilities in Norfolk and Jacksonville, post offices in Houston, Charlotte and Jacksonville; and the massive Warner Robbins Air Force Base in Macon. These cases challenge standards and policies that have prevented blacks and other minorities from being hired and promoted in the federal service on a nondiscriminatory basis.

A major and significant case was added to our docket in January with a legal challenge to the present Professional and Administrative Career Examination (PACE) which, in most cases, is the single determining factor in considering applicants for thousands of professional, administrative and technical jobs in a large number of federal agencies. We charge that PACE has so severe an adverse impact on blacks, Hispanics and other racial minorities that it threatens to segregate the middle levels of the executive branch of the federal government. We filed suit jointly with the Lawyers Committee for Civil Rights Under the Law, the Mexican-American Legal Defense Fund, and IMAGE de California, an association of Hispanic federal and state employees.

On the local government level, LDF has won a case on behalf of black officers and applicants to the Louisville police force. In *Louisville Black Police Officers* v. *City of Louisville*, the U.S. District Court for the Western District of Kentucky ruled that the City had used discriminatory hiring practices and ordered the City to appoint at least one black officer for every two whites appointed during the next five years.

A further significant development occurred during the past year. For the first time, an LDF federal Title VII case went to trial on the merits. In *Chisholm* v. *United States Postal Service*, the judge ruled from the bench at the completion of trial that the plaintiffs had proven discrimination against black workers at the Charlotte, North Carolina post office. Both sides are attempting to effect an agreement on the remedy.

Civil Service Reform

For a number of years LDF has been extensively involved in attempts to bring about reforms in the federal civil service system. Efforts have included litigation under the equal employment opportunity provision (Title VII) of the Civil Rights Act charging discrimination against a number of federal agencies, and litigation and other attempts to bring about reforms in the procedure under which federal employees are able to bring and pursue discrimination com-

plaints. In two cases the Legal Defense Fund was successful in bringing about significant revisions in the Civil Service Commission's administrative procedures. One reform insures that complaints that had been rejected on procedural grounds would, in the future, be adjudicated on their merits; another; that the system would follow Title VII law with regard to granting back pay in cases where there had been a finding of discrimination.

Early in 1978, the President announced Reorganization Plan No. 1, which shifted authority over federal employee Title VII claims to the Equal Employment Opportunity Commission (EEOC) and introduced reforms in the civil service system, including the Civil Service Reform Act. This Act abolished the Civil Service Commission and divided it into the Office for Personnel Management and a new adjudicatory body, the Merit System Protection Board. In Congress, attempts were made to divest the EEOC of some of its new jurisdiction over federal employee cases and give it to the Merit System Protection Board. The Legal Defense Fund staff, through its Washington office, worked closely, and successfully, with Congressional committees to develop a compromise bill which would insure that the EEOC would retain primary jurisdiction over all employment discrimination claims involving federal employees.

AFFIRMATIVE ACTION

In the 12 months since our last report, affirmative action was a dominant public issue, particularly for those of us concerned with civil rights. But unlike the *Bakke* case decided by the Supreme Court in June, 1978, the Court's 1979 decision in *Kaiser Aluminum and Chemical Corporation* v. *Weber* was a clear and major victory that opens wide the door for affirmative action programs in employment. The decision in *Weber*, in which the Legal Defense Fund, the National Urban League and Howard University jointly filed an *amicus curiae* brief, provides a legal basis for LDF and others to successfully meet legal challenges to voluntary affirmative action in employment.

In its 5-2 decision on June 27, the Court rejected the argument of Brian F. Weber, a white worker, that a training program designed by Kaiser Aluminum and the Steel Workers Union to increase the number of blacks in skilled-craft jobs constituted unlawful "reverse discrimination". The decision not only eliminates a whole area from the prospect of litigation but also removes a major obstacle to compliance with affirmative action mandates.

The *Weber* decision will undoubtedly have a positive impact on several pending cases involving affirmative action in employment. The two leading cases involve the City of Detroit and are being handled by LDF. In one, we were victorious in the trial court when the affirmative action plan adopted by Detroit Mayor Coleman Young to increase the number of blacks holding the rank of lieutenant in the City's Police Department was judged "reasonable," . . . "appropriate" and "fair" overall by U.S. Circuit Judge Damon J. Keith sitting in the U.S. District Court for the Eastern District of Michigan. This is the so-called lieutenants' case which was tried in Detroit from August 1978 to January 1979. The case is one of two brought by the white-dominated Detroit police officer union charging that the Mayor's plan constituted "reverse discrimination." The Court disagreed, saying that the plan must be viewed not as a deprivation of white police officers but as a benefit for blacks who were victims of past discrimination by the Police Department. The October 1st decision calls for the Detroit Board of Police Commissioners to review its plan—which had been halted as a result of the challenge—and to establish an end goal either by fixing percentages or setting a time frame for completion. The Court will review the Board's proposal for reasonableness.

Prior to LDF's involvement, the other case, known as the sergeants' case, was lost by the City in trial court. LDF represented the City on the appeal which was argued on June 12th and is pending decision before the U.S. Court of Appeals for the Sixth Circuit. The two cases could be highly influential in determining the direction of affirmative action policies in municipal employment.

In another area, the Legal Defense Fund was asked in May 1979 by the City of New York to work with their representatives to develop an affirmative action policy governing areas of employment and contracts. The City seeks our advice in promulgating uniform rules for affirmative action governing the awarding and enforcing of city contracts and in establishing a legal framework for *Weber*-type affirmative action in city job-training programs. LDF staff attorneys are providing counsel.

Another aspect of affirmative action will be decided next term in a case before the Supreme Court, *Fullilove* v. *Kreps*, in which LDF is filing an *amicus* brief. LDF is defending the right of Congress to "set aside" a fixed percentage of government funds for minority firms to remedy the effects of past discrimination in the construction industry.

Education: Post *Bakke* Assessment

In the area of education there is still evidence that affirmative action is deterred, in part, by *Bakke*-type attacks. The LDF staff has begun a review of the nature and quality of affirmative action programs which law schools have instituted following *Bakke*. We have been examining the admissions programs of a large number of law schools to attempt to determine if they have abandoned their affirmative action goals or curtailed efforts to adopt affirmative action for minorities to an extent greater than required by *Bakke*. We are concerned by the fact that there seems to be serious discrepancies between the *reported* versus the *actual* numbers of minorities admitted to universities and professional schools. We will measure the extent to which the under-enrollment of minorities has occurred to determine the degree to which it can be attributed to *Bakke*. We have also found that the universities and those within them who wish to advance affirmative action programs remain unsure of what exactly is required. We have provided counsel in these instances and will continue to do so.

Those who oppose affirmative action in any form have not given up, perhaps, in part, because the Supreme Court has yet to deliver a definitive opinion on the question. We have been working to move the Court to an across-the-board rat-

ification of affirmative action. We are doing this by intervening in cases, on behalf of blacks, that we believe will result in building the substantive law needed to establish a baseline for all affirmative action programs.

WASHINGTON, D.C. OFFICE

The Tax Reform Act of 1976 permits organizations like the Legal Defense Fund, for the first time, to engage in lobbying within specified limits. Because many of the issues in which LDF is interested are susceptible to legislative as well as courtroom efforts, LDF two years ago established a legislation office in Washington. This office has emerged as one of the most significant civil rights forces on Capitol Hill. Headed by LDF Assistant Counsel, Elaine Jones, its principal areas of concern are: (a) proposed legislation which affects the operation of the courts and (b) legislation which affects civil rights which LDF litigates to protect, whether that right is created by statute or protected by the Constitution of the United States.

One example of an issue which engaged our attention and in which we prevailed during the past twelve months concerns a proposal in the U.S. Senate to divide the Fifth Circuit Court of Appeals where LDF has a significant number of cases. Mississippi Senator James O. Eastland tacked a provision onto a federal judgeship bill which would have created two courts of appeal from the present six-state Fifth Circuit. The division would have carved out of the present, moderate bench a far more conservative body for the Southeastern states. The new circuits would have divided along geographical lines with the two states of Louisiana and Texas creating a new circuit and the four states of Georgia, Louisiana, Mississippi and Florida creating a new Deep South Circuit.

The "split" had already passed the Senate when LDF began its legislative activity in 1977. By October 1978, LDF—concentrating efforts in the House Judiciary Committee—had coordinated the opposition and marshalled support from other groups and from supporters in the Fifth Circuit states. During the six-month Conference between

the Senate and the House, LDF staff worked with both Houses, succeeding at the end of the year in having the Eastland proposal defeated.

The Washington D.C. Office insures that those issues that are susceptible of being corrected in the Congress will be addressed there as well as through litigation.

ADMINISTRATION OF CRIMINAL JUSTICE

Cruel and Unusual Punishment

Progress and advances in the law were tempered and severely undercut by the execution of John Spinkellink in Florida. John Spinkellink had been represented by the Legal Defense Fund for most of the six years he spent on Death Row. His death, in the words of LDF Director-Counsel Jack Greenberg, was "an outrageous combination of inhumanity, stupidity and superstition." In a statement issued following the execution, Mr. Greenberg pointed out that John Spikellink's crime was no worse than tens of thousands for which lesser penalties regularly are imposed and that Spinkellink's accomplice in the crime is free. Mr. Greenberg has compared the treatment given John Spinkellink, who murdered an acquaintance by whom he had been brutally assaulted, with that of the former San Francisco Supervisor who murdered the City's Mayor and another Supervisor in cold blood. Spinkellink was executed but the Supervisor received a sentence of less than eight years.

Since the State of Florida has approximately 130 inmates on Death Row, the Governor's promise to make such executions "routine" could result in Florida surpassing South Africa, equaling Iran and approaching the Soviet Union in legalized killing.

Despite this very serious setback our commitment to the campaign against the death penalty remains strong. We are continuing to develop social science evidence to prove that, in its application, the death penalty, is meted out in an arbitrary and capricious manner falling with significantly greater frequency on poor and minorities. We also represent 50-60 inmates, directly and indirectly, as counsel or co-

counsel. Efforts are concentrated now in states with the greatest number of inmates who are most likely to be executed. In countless other cases nationwide we are helping devise legal strategy, making our legal research available to other counsel, preparing and filing last minute appeals and assisting in drafting briefs. We continue to look for new arguments to press the attack on the constitutionality of state laws that have not yet been tested and to work on related procedural issues such as the fairness and composition of juries in capital trials.

Prison Reform

In the past twelve months there has been an increase in our involvement with prison reform cases. *Guthrie* v. *Ault*, first filed in 1973, is LDF's case against the Georgia State Prison (GSP) at Reidsville. In 1978 we secured several consent orders concerning the rights of GSP inmates including the cessation of racial discrimination and brutality at the prison, reduction of overcrowding, improvement of physical conditions, provision of law and regular library services, and the right to religious services and pork-free diets for Black Muslim inmates. LDF also won a court order desegregating the prison and requiring the construction of single cells so that the prisoners may be adequately protected from one another. In 1979 we obtained the appointment of a Special Monitor to assist the court in overseeing and enforcing compliance with the previously-won orders. A collateral benefit of the case has been the approval by the Georgia legislature of the construction of a new prison hospital facility to better serve the medical needs of the Georgia prisoners. LDF continues to press for improvement in the provision of medical services at the prison itself.

Ruiz v. *Estelle* is a challenge to the conditions of confinement in the Texas prison system. It was tried before Judge William Wayne Justice in Houston. LDF and U.S. Justice Department attorneys have introduced volumes of evidence regarding the brutality, overcrowding, poor medical care and other inhumane conditions in the Texas prison system.

LDF has also been increasingly active in the courts of appeal and the Supreme Court particularly in cases dealing with pre-trial detention. The rights of those awaiting trial, still presumed innocent, had been expanded by the courts since the late 1960s when LDF's case, *Jones* v. *Wittenberg*, established that the "least restrictive" detention should apply to pre-trial detainees. The application of this principle received a setback in the recent Supreme Court decision, *Bell* v. *Wolfish*, which held that detainces had only the right not to be punished. The decision upheld several practices such as routine body cavity searches which undermine the decade-old precedent that pre-trial detainees have greater rights than those who have been convicted of a crime. In an effort to limit the retrogressive effect of *Bell* v. *Wolfish*, we are actively involved in several cases. We have filed a brief as friend-of-the-court in a similar case involving an appeal of a district court decision upholding the right of detaines to have "contact" visits with their spouses and children, i.e, to be able to touch and have physical contact during visits.

HOUSING

The effort to find an effective way to identify and correct discrimination in housing is developing slowly and against great obstacles. Progress is severely limited because the federal Fair Housing Law, lacking an enforcement mechanism, has not realized its full potential. Another part of the problem stems from the fact that many discriminatory practices are capable of being well-disguised and it has been difficult to find a workable test to identify and expose them.

We recently won a case on appeal in the Sixth Circuit which will help establish ways to identify some of these subtle forms of discrimination. *Harper* v. *Hutton* concerned a black couple in Nashville, Tennessee, who had been refused rental of an apartment obstensibly because they were not credit worthy. We proved to the satisfaction of the appellate court that black applicants for apartments were subjected to standards and procedures far more exacting than those applied to white applicants. *Harper*

established that objective standards for determining credit worthiness must be universally applied. *Harper* will have a significant impact on all housing cases in the Sixth Circuit.

In view of the limited progress in getting housing cases certified as class actions, we continue to seek ways to bring actions that will affect large numbers of real estate firms. A noteworthy development has been the successful use of testing in racial steering cases in large areas, such as Delaware County in suburban Philadelphia, Milwaukee and New Haven. A legal test of the enforcement responsibility of country boards of realtors—an alternative to government inaction—is about to begin in *Coleman* v. *Carr Realty*, the Pennsylvania case. This is an action against five real estate firms (we settled with one firm earlier) and the County Board of Realtors. We seek compensatory and punitive damages and injunctive relief on behalf of all blacks who have sought homes in Delaware County. We are asking the court to certify the case as a class action and to order an affirmative sales policy to overcome the effects of past discrimination. The charges against the Board of Realtors which has more than 300 active and 500 associate members, allege improper policing and enforcement of fair housing laws, refusing to insure that its multiple listing service is used in a nondiscriminatory fashion and discouraging fair housing realtors from becoming members.

In the U.S. District Court for the Eastern District of Pennsylvania, which is hearing the case, we won an important procedural victory when the Judge refused to dismiss the Board of Realtors as defendants, which means we are going to trial against them. This is the first time that a Board of Realtors has gone to trial on charges that it insulated its member firms from discovery of violations of the federal fair housing law. If we win, widespread relief against every realtor in the country should be possible. In addition, if successful the case will provide a model for bringing area-wide rather than individual cases. Most important, it will cause real estate boards to be responsible for the practices and policies of member realtors under the supervision and monitoring of the courts.

Monsonis v. *Best Realty* is LDF's case against four major Brooklyn real estate firms that practice racial steering in the sale of housing. As reported last year, we have submitted a proposed settlement with the realtor and we are awaiting the final approval of the Court. The settlement enjoins further discrimination on the basis of race in the sale or rental of housing and requires the realtor to take affirmative steps toward implementing fair housing practices.

Two other housing-related initiatives are underway. One deals with federal relocation funds. The Uniform Relocation Assistance and Real Property Act requires that the sponsors of a federally financed project aid the tenants, owners and businesses displaced by the project in finding decent, safe and sanitary alternative locations that they can afford.

We are seeking to enforce these policies in *Bullard* v. *College of Charlestown Foundation*, a class action brought on behalf of all owners and tenants—primarily poor black persons and elderly white persons—who have been displaced by the expansion program of the College. By using the College Foundation to acquire the land from the occupants, the College avoided paying any relocation funds. It claims that the Foundation is a private institution and therefore exempt from complying with the federal law. We have completed pre-trial discovery and expect to go to trial.

LDF has filed a friend-of-the-court brief in *Conference of Federal Savings and Loan Association et al* v. *Alan Stein*, a case involving the application of California's anti-redlining statute to federal savings and loan institutions. The Federal Home Loan Bank Board is seeking a declaratory judgment that the federal banks are not subject to state regulations. The California statute established a comprehensive regulatory program governing all financial institutions which make, arrange and purchase loans on single to four-unit residential properties. It imposes more restrictions than the federal regulations on the lending institution's right to consider the location of property in granting or denying a loan application. In addition, California's Secretary for Fair Lending is given the authority to monitor the lending patterns and policies of all lending institutions in

the State and to take whatever steps are necessary to assure compliance with the Act.

Oral argument in the case was held in July 1979. LDF Director-Counsel Jack Greenberg argued that all civil rights statutes contemplate cooperation between the state and federal governments, and that California's statute is a model in this regard. We urged the District Court to deny relief to the Federal Bank Board because California's statute represents a positive, effective approach to combat redlining, and should be encouraged rather than frustrated.

EDUCATION

The *Adams* case, first filed by LDF in 1970, to compel HEW to enforce federal civil rights laws, regulations and guidelines in public education, continues to bring about integration in public education, particularly at the elementary and secondary level. Prior to *Adams*, LDF was required to bring scores of cases challenging segregation in public school systems. Today, much of the volume can be handled under *Adams*, giving LDF the opportunity to select principle-making, pace-setting cases in the school integration area.

It is ironic that on the final day of its 1978-79 term one of the cases decided by the Supreme Court turned on the issue of school desegregation. Twenty-five years after the High Court in *Brown* v. *Board of Education* and the companion school segregation cases called for an end to "separate but equal" public education facilities, it passed judgment on a plan to end present-day segregation in the Dayton and Columbus, Ohio public school districts. The Court upheld busing orders in both cities for the purpose of achieving integration. In these cases, *Columbus Board of Education* v. *Penick* and *Dayton Board of Education* v. *Brinkman*, the Legal Defense Fund jointly filed an *amicus* brief with the United Auto Workers.

Two other LDF cases concern the school boards in Austin and Dallas. In the Dallas case, which was first filed in 1970, the Supreme Court granted the school board and two white parents a petition for review. We have been associated with local lawyers who represent the plaintiffs and

were involved in writing the Supreme Court brief. The issues involve what kind of desegregation plan is permissible, how much busing should be allowed and how extensive it should be, and whether the school board is doing enough to effect desegregation throughout the system. Similar issues are at stake in the Austin case.

Legal Defense Fund attorneys have begun preparing motions in other pending cases that call for complete and immediate relief. In all, there are 30-40 active school cases on our docket. In addition, because many Legal Defense Fund cases concern the scope of remedy generally, the Court's ruling that school boards have an affirmative duty to desegregate will have a positive effect on those cases. It could result in a reassessment of other cases whether we believe relief has not been adequate; among those are one in Jacksonville, Florida where we seek further relief on the establishment of magnet schools, school construction plans and the general ineffectiveness of the present desegregation plan; and in Springfield, Illinois, where school closings and teacher dismissal are the issues.

In higher education we are dealing with issues in addition to affirmative action, including continuing dualism in many southern state-wide systems and the need to insure that the traditionally black colleges are not closed or downgraded in the effort to integrate state systems. One such case, *Geier* v. *Blanton*, concerns desegregation of the public higher education system in Tennessee. On October 1st, the Supreme Court declined to review the Sixth Circuit ruling in one aspect of *Geier*, ordering that the University of Tennessee at Nashville (UTN)—predominantly white—be merged into the pre-existing Tennessee State University (TSU)—historically black—in order to overcome the racially discriminatory public higher education system in Nashville. The merger, begun in July, will go ahead under the administrative control of the black school, as requested by the NAACP Legal Defense Fund which represents black students, potential students, faculty and staff in *Geier*. The Supreme Court's refusal to review the Sixth Circuit decision represents a major advance toward our twin goals of eliminating dualism in public higher education

in the South at the same time insuring that the traditionally black colleges are not closed or downgraded in an effort to integrate state systems. The Court's decision also reaffirms the obligation of statewide systems to convert to unitary systems. The merger is a comprehensive, innovative judicial remedy without substantial precedent in the elementary school context, specifically adapted to the needs of higher education in the Nashville area.

The second part of *Geier*—the one we have yet to fully litigate—concerns the system-wide desegregation of Tennessee higher education. Here, the District Court and the Court of Appeals declined to require, on the present record, accelerated statewide desegregation of students, faculty and administrative staff sought by LDF. Slow progress has been made toward that goal and the lower courts will now consider whether it has been fast and comprehensive enough. The courts have given us a further opportunity to show that lack of progress in desegregation would justify further relief.

Whatever remedies we develop will have significance for higher education generally. HEW's implementation of the higher education guidelines established under court order in *Adams* have referred to Geier (as decided in the lower courts) as a precedent. To the extent that *Geier* in its new aspect becomes a model, HEW is likely to emulate it. To too large an extent, HEW higher education requirements have had limited timetables, no enforcement requirements and inadequate provisions for funding. The law LDF makes in *Geier* will force HEW to adopt more effective guidelines, broadening the impact of *Geier* across all states with former dual systems of public higher education.

Apart from using litigation and the courts to formulate guidelines for dismantling dual systems, LDF is also seeking to evoke HEW's adjudicatory machinery in an administrative hearing in order to enforce existing guidelines. In a recent action growing out of *Adams*, a judge ruled that HEW can proceed with an administrative hearing against North Carolina for its failure to come up with an approved desegregation plan. LDF has been granted the right to intervene in the proceeding which is

expected to last throughout most of 1980 and will engage at least one staff attorney full-time while it is underway. Our major objectives are to require that North Carolina dismantle its dual system in accordance with present HEW guidelines, to defend the guidelines we consider appropriate, and propose new ones to replace those we consider inadequate or insufficient. The hearing is unprecedented in this context and could lead, eventually, to a cut-off of Federal funds to North Carolina's public higher education system, but, we hope, instead will lead to integration of higher education in that state.

DELIVERY OF HEALTH CARE SERVICES

Recently the United States District Court in Gary, Indiana gave permission for the parties to make public the terms of the settlement in the Legal Defense Fund's case, *Hatcher* v. *Methodist Hospital of Gary, Indiana*. This case, in which we represented Richard Hatcher, the mayor of Gary, Indiana, and the city's poor and minority residents, challenged the use of federal funds by Methodist Hospital to build a satellite unit in an all-white suburb of Gary which had siphoned doctors, nurses, other medical personnel, money and equipment from the inner-city hospital. The Legal Defense Fund had also named the U.S. Department of Health, Education and Welfare (HEW) as a defendant in the case, maintaining that HEW did not enforce civil rights laws governing federal funds for health care. The court-approved settlement delineates long-term plans to reverse discriminatory health-care policies in the Methodist Hospital System, including a commitment by the hospital to spend $20 million in the first phase of the negotiated settlement. The settlement calls also for intensified efforts to integrate the staff and patient census at both the city and suburban facilities. The Board of Directors of Methodist Hospital will be restructured to reflect the minority population in Gary.

Another major health care case is underway in San Antonio, Texas where we are challenging the actions of the County Health District which moved a downtown obstetrics facility 50 miles to a county health facility. We charge that

moving maternity services to the suburban facility discriminates against low-income inner city minority women of childbearing age in violation of Title VI of the Civil Rights Act of 1964 and various other civil rights authorities.

In New York, we are working with the New York Metropolitan Council of Branches of the NAACP to try to prevent the closing of municipal hospitals in New York City. LDF filed a class action lawsuit in federal court charging that the announced plan of Mayor Edward I. Koch and city health care officials to close four municipal hospitals in New York City violates federal due process and civil rights law, state and local health planning laws and various provisions of the State Constitution and City Charter. If successful, the suit would block City and State officials from approving or implementing any plans to reduce in-patient or out-patient services, to close hospitals or reduce services until all black and Hispanic residents have the same access to adequate health care as white residents. It would require that any illegal reduction be reinstated.

VOTING RIGHTS

Important issues concerning voting rights were put off for another year when the Supreme Court set for re-argument LDF's case in Alabama, *City of Mobile* v. *Bolden* and *Brown* v. *Moore*. *Bolden* involves the use of at-large elections to choose the City Commissioner, while *Brown* concerns the election of the School Board.

In Florida, three cases are pending in Pensacola, one against the City and two against the County to compel the use of single-member districts in voting for City officials and City and County Commissioners.

In the South, at-large elections discriminate against blacks by diluting, sometimes negating, their potential voting strength. For example, in a city council election held at-large—that is, city-wide—where ten positions are to be filled, typically no blacks will be elected even though blacks may be thirty percent of the electorate. If elections were held by district, blacks would be able to elect candidates from those districts where there were significant numbers of black voters concentrated. LDF has won a number of

suits barring at-large elections, with the result that there has been a substantial increase in the number of blacks elected in Southern municipalities.

DIVISION OF LEGAL INFORMATION AND COMMUNITY SERVICES

Throughout 1978 and 1979 the Division continued monitoring the efforts of the U.S. Department of Health, Education and Welfare (HEW) to comply with court orders in the longstanding omnibus *Adams* case filed by LDF in 1970 (and its companion *Brown* v. *Secretary of HEW*) which require HEW to perform its duty not to support segregation in public elementary, secondary and higher education. Beginning in 1977, as a result of court orders in *Adams*, HEW for the first time formulated and started implementing criteria for desegregation of state systems of public higher education in Arkansas, Florida, Georgia, North Carolina, Oklahoma and Virginia. During this time LDF staff worked closely with HEW in devising effective guidelines and monitored the Department's negotiations with the states over the specifics of desegregation plans.

The guidelines require that the states adopt specific commitments for recruitment, admission and retention of black students; eliminate duplication of programs in neighboring black and white institutions to promote desegregation; plans for staff and faculty integration; and plans to enhance the role of traditionally black colleges in an integrated society. With regard to this last guideline, LDF has worked vigorously to prevent downgrading or closing historically black colleges which have been consistently short-changed by the states in funding resources and programs.

At this juncture the issue involves HEW's requirement that the long-delayed desegregation of these six Southern states proceed. In all but North Carolina, five-year desegregation plans have been approved by HEW; Division staff will monitor closely their implementation. North Carolina officials have been particularly recalcitrant, challenging one of the most significant aspects of the guidelines by announcing that they would not close or transfer duplicate educational programs to promote integration in the system. In a recent action, a judge ruled that HEW can proceed

with administrative hearings against the state for failure to come up with an approved plan. This could lead, eventually, to a cut-off of federal funds. However, the judge would not allow HEW to defer new grants to the state. The hearing is expected to begin in January 1980. LDF has been granted the right to intervene and will be closely involved in every step in the enforcement proceeding.

The Division also has responsibility for monitoring the application of federal funds to state-supported vocational education systems. HEW's failure to withold federal funds from systems not complying with civil rights law has resulted in vocational schools which perpetuate patterns of sex and race discrimination. In an effort to eliminate these inequities, the Division began a program two years ago armed with provisions of the consent order in *Adams*. The program concentrates on the enforcement of civil rights laws by HEW's Office of Civil Rights (OCR) and on implementation of provisions of the Vocational Education Act of 1976 which provide that states give priority funding to economically depressed areas and require elimination of sex discrimination, sex bias and sex stereotyping in vocational education.

Recent efforts to effect change in vocational systems have been concentrated in a few states where we have extensive community contracts—Mississippi, Alabama, North Carolina and California. Projects are beginning in Pennsylvania, Louisiana and Delaware. In North Carolina where there is a regional Division staff person, we helped organize a citizens' committee and provided technical assistance to study the state's five-year plan. We documented patterns of race and sex segregation in programs and the general underrepresentation of minority teenagers in the system. We filed extensive comments with HEW outlining the failure of the state's plan to conform to federal standards, followed by a formal complaint. We are awaiting a response.

For the third consecutive year, the Division sponsored a Minority Women Lawyers Training and Technical Assistance Program which held its first law school-based seminar at Stanford Law School in California in July. The program

was attended by more than 100 black, Asian-American and chicana women lawyers from ten Western states. The seminar included an opening address by J. LeVonne Chambers, President of LDF, who gave an assessment of Supreme Court decisions under Chief Justice Warren Burger as they affect racial minorities and women. The theme of the program, "Minority Women Lawyers—Leaders in the Struggle for Justice", was addressed by Annie Gutierrez, an Attache with the Immigration and Naturalization Service at the U.S. Embassy in Mexico.

Panels and workshops during the three-day program examined topics relevant to the particular needs of the participants including the problems of minority women in nontraditional positions and the role minority women lawyers can play in fighting racism and sexism. The conferences included "nuts and bolts" discussion of litigation of employment discrimination (Title VII) cases, including how small firms can handle Title VII cases, procedures for representing federal employees and how to resolve competing interests of women, minorities and the handicapped in this area. Among those who participated in the Title VII panels were LaDoris Cordell, Assistant Dean, Stanford Law School; Morris Baller, Esquire, Mexican-American Legal Defense and Educational Fund; and Shirley Nakao, Attorney-at-Law, Disability Law Resource Center, Berkeley. Other Workshops dealt with recent developments in assuring women equal access to credit, addressed by Walter Gorman, Deputy Chief, General Litigation Section, Civil Rights Division, U.S. Department of Justice; challenging redlining and discrimination in housing and mortgages, moderated by Sandra Carter, U.S. Department of Housing and Urban Development, Los Angeles; and justice for minorities, women and children in institutions with Lynn Walker, Attorney-at-Law, who is chief of the Justice Department's section on prisons. Other topics discussed were how to represent minority businesses and institutions, legal approaches to special health problems of minorities, and representation of undocumented aliens. Participants in the these panels included Sam Norman, Esquire, Foundation for Assistance to Minority Enterprises,

Oakland; Sylvia Drew Ivie, Attorney-at-Law, Health Law Project, Los Angeles, and Annie Gutierrez.

EDUCATION AND LEADERSHIP DEVELOPMENT

The Earl Warren Legal Training Program continued its scholarship program. Since its inception, the program has provided scholarships for more than 1,100 black law students and has made a substantial contribution to increasing both the numbers and the skills of black lawyers. Eighty-nine Earl Warren Fellows also have benefited from the program since 1972. Scores are now district attorneys, mayors, state legislators and state and federal judges. Many more are in private practice, the corporate sector and in governmental service in high-level policy-making positions. Along with the Fellows, the more than 1,000 Earl Warren Scholars are working in communities throughout the country to provide much-needed legal services to black citizens. They are also active in the civic and political life of their chosen communities serving as advisors to numerous youth, religious and community organizations.

For the 1978-79 academic year, the Herbert Lehman Education Fund assisted 160 students—118 in formerly all-white colleges and universities in the South, and 42 in law schools in all parts of the country.

Initiated in memory of the late Senator Lehman in 1964—with the encouragement and support of the Lehman family—the Lehman Fund today depends upon contributions from the public for its scholarship funds. For the first time in its history, the Fund received contributions from just over five thousand men and women who gave a total of $262,188 in 1978.

Although the Lehman program is small, it has played an important role in establishing a flow of qualified black students to Southern institutions. It has helped hundreds of students prepare for a better life—not only for themselves but also for the communities to which they return after graduation.

BROWN v. *BOARD OF EDUCATION*—*25 YEARS LATER*

Hundreds of persons attended the Legal Defense Fund's four-day program in May 1979 to commemorate the 25th

Anniversary of the Supreme Court decision *Brown* v. *Board of Education*. Conferences were held in New York and Washington D.C. in conjunction with Columbia University's Center for the Study of Human Rights and the Howard University School of Law. Among the leading participants were Andrew Young, William T. Coleman, Jr., Vernon Jordan, Wiley A. Branton, members of the Black Congressional Caucus and scores of the nation's foremost attorneys, along with legal scholars, educators, foundation executives, journalists and civil rights leaders. Black and white delegates from South Africa and representatives from the Sudan, Ghana. India, the West Indies and the government of Great Britain participated. The program ran from May 14 through May 17.

White House Reception

A White House Reception for lawyers, plaintiffs and others connected with the *Brown* cases followed the program's closing session Thursday afternoon, May 17. Many of the Board and staff of the Legal Defense Fund were invited, along with several program participants. The President, Ambassador Andrew Young, HEW Secretary Joseph A. Califano and Dr. Mary Berry, Director of the U.S. Office of Education, addressed the 300 invitees.

25th Anniversary Dinner

The *Brown* 25th Anniversary commemoration ended with a dinner attended by 1,200 persons the night of May 17th in Washington D.C. Under the leadership of LDF, it was sponsored and attended by leaders of civil rights organizations, members of the Black Congressional Caucus, members of the United States Senate and House of Representatives, black elected officials, lawyers and plaintiffs from the *Brown* cases, and long-time friends and supporters of the Legal Defense Fund as well as all who participated in the four-day program. Andrew Young addressed the guests along with Paul C. Warnke, the U.S. arms treaty negotiator in 1977 and 1978 who was Chairman of the dinner. The keynote was given by Howard Law School Dean Wiley A. Branton. Others on the dinner program included William T. Coleman, Jr., Julius Chambers, Jack

Greenberg, D.C. Mayor Marion Barry and Ossie Davis who was Master of Ceremonies. The Reverend Joseph Lowery of the Southern Christian Leadership Conference delivered the Invocation.

> During the dinner a special message was read to the guests from Roy Wilkins who was not able to attend. It read, in part: "The brave plaintiffs of the NAACP branches in South Carolina, Virginia, Delaware and Kansas risked their lives and everything they owned to make America a better place to live. Thurgood Marshall, Robert I. Carter, Jack Greenberg and other lawyers of the NAACP Legal Defense and Education Fund championed their cause....if all of us continue to work together, closely and supportively, I am sure the day of complete freedom will be advanced greatly."

Pictured on the next two pages are participants in LDF's program commemorating the 25th Anniversary of *Brown* v. *Board of Education*. The program spanned four days beginning Monday, May 14, at Columbia University in New York with panels on the international implications of *Brown* followed by three days of conferences at Howard University School of Law in Washington, D.C. to discuss the educational and economic status of black Americans 25 years after *Brown* and the agenda for the 1980's. The program ended with a dinner sponsored by LDF attended by 1200 persons including civil rights leaders, lawyers, educators, appointed and elected officials and program participants.

Photo credits on page 23

PHOTOS

1. Dalcroze Midshows, South Africa
2. L to r., Constance Baker Motley, Clarice L. Black, Jr., Oliver Hill, Louis Redding
3. Andrew E. Bateman
4. Curtis Davis, Vilaj A. Bowens, Jack Greenberg
5. Bill Sorokjan, Judge
6. Vivian Scales (at Antioch) and plaintiffs from Bowens and companion cases
7. Joseph L. Rauh, Jr.
8. Bayard Rustin
9. Arthur Chaskalson, South Africa
10. L to r., Joseph L. Rauh, Jr., Louis H. Pollak, Alan Pifer, Vernon E. Jordan, Jr.
11. Jean E. Fairfax
12. Edgar Epps
13. L to r., Phyllis A. Wallace, John W. Powell, Jr., Percy J. Walcott
14. P. Telford Georges, West Indies



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15. L to r.,
William T. Coleman, Jr.,
Julius LeVonne Chambers,
Andrew Young, Ossie Davis
16. M. Carl Holman
17. Drew S. Days III
18. Samuel Ota Oyinkish, Jr.,
Ghana
19. Charles V. Hamilton
20. L to r.,
James M. Nabrit, Jr., Charles
T. Duncan, Charles L. Black
Jr., Charles S. Scott, J[illegible]
Scott
21. Dr. Alcinda Moyon, The
Sudan
22. Reception, 25th Anniversary
Dinner
23. J. Clay Smith, Jr.
24. L to r.,
Thompson Powers,
Judith Heimann,
E.W. Cleaves
25. Clifton Robinson, Great
Britain
26. Kenneth B. Clark
27. L to r.,
Anthony Lewis, Robert
Maynard
28. Gaines Ros Nichol

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40TH ANNIVERSARY CAMPAIGN 1978-1980

Goal: $18,500,000 Over Three Years to Secure Past Gains from Erosion and Add New Resources to Meet New Needs

To succeed, the campaign needs to sustain and increase giving among its traditional supporters—individuals (over 60,000), foundations, community organizations, Board members—and to find new support among those segments of the community which have not been substantial supporters in the past. In an effort to meet the budgetary goals by the end of the campaign, a major drive is underway in the corporate sector where a major part of the new funds is being sought. Efforts have begun also to increase contributions from the legal community through a special "Committee of the Bar", labor unions and other organizations and individuals not previously involved.

Corporations

John H. Filer, Chairman of Aetna Life & Casualty, who heads the national campaign and John J. Riccardo, former Chairman of the Board of the Chrysler Corporation and the campaign's national corporate chairman before his retirement, began organizing the country into eleven regional committees, each with a Chairman responsible for raising funds from prime companies in the regions.

By mid-1979 thirty-three national business leaders had joined John Filer and John Riccardo in the push to raise the $3,500,000 to come from the national corporate sector over a three-year period. Initial payments and pledges resulting from this special effort now total $1,405,500. The funds have come from the New York City, Chicago, Detroit, and the Akron/Cleveland regions. In Hartford/Northern Connecticut, Boston, Minneapolis, Philadelphia, Pittsburgh, Los Angeles, San Francisco, Houston, Dallas and major cities in the Southeast, planning is underway and efforts to recruit chairmen are moving ahead.

Legal Community, Labor Unions

We are developing major support nationally among lawyers. Robert Kutak of Kutak, Rock and Huie, Omaha, Nebraska has accepted chairmanship of a "Committee of the Bar" and is recruiting lawyers for regional committees

with a goal of $315,000 to be used primarily to finance LDF's lawyer training institutes.

We were privileged and honored to have had A. Philip Randolph chair our National Labor Committee. Since his death in May, Bayard Rustin, President of the A. Philip Randolph Institute and a member of LDF's Board, has been working with our staff and others to recruit a new labor chairman and committee.

Special Appeals, Out-of-Town Committees

Board members have responded enthusiastically to the 40th Anniversary Campaign with increased giving and three-year pledges of support. A program for special gifts and bequests has been developed in connection with the campaign and has resulted in positive responses and many new gifts.

The fundraising committees LDF has maintained for several years in Chicago, New England, Northern California, Philadelphia, Southern California, and Washington now function under the campaign structure. There has been an increase in giving from their constituencies since the campaign began. These committees have been particularly helpful in providing local support and coordination for the national corporate campaign.

CAMPAIGN INCOME (Pledges & payments, 1 January 1978 through September 1979) ..... $ 6,872,611
AMOUNT NEEDED TO REACH GOAL $11,627,339

Campaign Committee

National Campaign Committee
National Chairman
John H. Filer
Chairman
Aetna Life & Casualty

National Labor Committee
(in formation)

Co-Chairpersons
Special Gifts Committee
Mrs. Andrew Young
Orville H. Scheil

Chairman
Committee of the Bar
Robert Kutak

Regional Corporate Campaign Committees

Akron/Cleveland Region
Chairman
John H. Gerstenmaier
Vice Chairman
Goodyear Tire & Rubber Company

Chicago Region
Co-Chairman
James F. Beré
Chairman
Borg-Warner Corporation

A. Robert Abboud
Chairman
First Chicago Corporation

Robert E. Anderson
Chairman
Continental Illinois Corporation

Warren H. Bacon
Manager, Manpower Administration
Inland Steel Company

Ernest T. Collins
Saxury National Bank

Marshall Field
Chicago Sun-Times

Perry Fuller, Esq.
Partner
Hinshaw, Culbertson, Moelmann, Hoban & Fuller

Ben W. Heineman
President
Northwest Industries, Incorporated

John H. Johnson
President
Johnson Publishing Company

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Klutznick Investments

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Chairman
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Senior Vice President
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Paine Webber, Incorporated

Robert R. Douglass
Executive Vice President & General Counsel
Chase Manhattan Bank, N.A.

James L. Ferguson
Chairman
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Robert M. Fomon
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Anthony M. Frank
Chairman and President
United Financial Corp. of California

Gordon I. Hough
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Pacific Telephone & Telegraph Company

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Cornell C. Maier
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Kaiser Aluminum & Chemical Corporation

J. Gary Shansby
Chairman Shaklee Corporation

Robert B. Shetterly
President
Clorox Company

EDITOR'S NOTE

PAGES 204 thru 210 WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

N.A.A.C.P. Legal Defense and Educational Fund, Inc.

Statement of Revenue and Expenses — General Fund

FOR THE YEAR ENDED DECEMBER 31, 1978

Recorded Revenue		
Contributions and fund raising for general purposes		$2,790,644.47
Bequests (1978 includes $50,000.00 for non-General Fund income)	$ 119,295.87	
Transfer bequests to General Fund unrestricted, (deduct) Note 1)	($ 50,000.00)	
Transfer bequest to Reserve for Contingency Fund, (deduct) (Note 1)	—	
Balance bequest recorded revenue for General Fund	(50,000.00)	69,295.87
Grants and contributions for Special Project Programs:		
Community services		108,850.00
Herbert Lehman education		262,187.80
Monitor performance of Federal agencies and administration programs designed to protect equal rights of minorities		125,000.00
Court award receipts, counsel fees and expenses		544,963.41
Interest and dividends		67,309.56
Total recorded revenue		3,968,140.91

Expenses			
Program services:			
Legal	$2,315,173.17		
Community services	286,089.53		
Herbert Lehman education	173,814.90		
Public information	70,850.82	$2,847,928.42	
Supporting services:			
Management and general	239,427.30		
Fund raising (includes for H.L. education, 1978-$187,731.44)	996,860.42	1,256,287.72	
Total expenses			4,104,216.14
Excess of (expenses over received revenue) to Statement 2			($ 116,075.23)

See notes to financial statements which are an integral part of these statements.

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N.A.A.C.P. Legal Defense and Educational Fund, Inc.

Details of Expenses — General Fund

FOR THE YEAR ENDED DECEMBER 31, 1978

	Program Services					Supporting Services		
	Legal	Community Services	H. L. Education	Public Information	Total Program Services	Management and General	Fund Raising	Total All Programs
Salaries	$1,096,695.37	$ 151,317.59	$ 30,938.94	$ 16,613.35	$1,295,536.85	$ 178,640.22	$ 61,444.61	$1,495,621.70
Payroll taxes and employee benefits	164,697.18	26,008.05	5,201.62	2,600.81	218,467.66	31,209.64	10,405.24	260,080.55
Total payroll costs	1,261,912.55	177,325.64	36,122.16	19,214.16	1,474,004.49	209,852.85	71,847.89	1,755,705.23
Direct expenses of litigation: Legal fees and expenses (supporting attorneys, court costs, expenses of expert witnesses, consultants, travel staff attorneys, legal printing, law books and reference services (attorneys, conferences, etc.)	728,990.62				728,990.62			728,990.62
Community services regional offices expenses (rent, telephone and upkeep)		19,994.95			19,994.95			19,994.95
Herbert Lehman Education Scholarship grant awards (1978 includes $47,400 to L.W. for law scholarships) (Note 2)			119,490.00		119,490.00			119,490.00
Communication expenses, newsletter publication for public information, press releases, information clipping services, etc.				21,572.82	21,572.82			21,572.82

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	Program Services					Supporting Services		
	Legal	Community Services	R. I. Education	Public Information	Total Program Services	Management and General	Fund Raising	Total All Programs
Washington D.C. legislative office expenses (rent, telephone and upkeep)				11,123.98	11,123.98			11,123.98
Increase performance of Federal agencies and administrative programs (total Gross expenses only)				1,349.55	1,349.55			1,349.55
Fund raising (appeal letters, mailing, list rentals, build-up contributors files, national office fund raiser fees and expense reimbursements, fund raising affairs, etc.							541,625.18	541,625.18
Fund raising out of town office maintenance and upkeep, fund raising affairs and expenses							201,144.67	201,144.67
Fund raising expenses—R.I. Education (appeal letters, mailing, etc.)							187,731.48	187,731.48
Expenses in connection with bequest receipt							500.00	500.00
Rent and office maintenance—National Office	131,352.95	16,419.12	9,099.43	2,279.74	159,101.24	8,209.56	28,277.61	195,588.41
Telephone and communications (Note 1)	66,676.15	7,254.55	3,194.64	775.91	77,879.25	1,130.86	4,507.06	83,517.17
Postage and mailing	15,378.98	1,882.59	750.19	469.61	18,481.77	375.10	1,261.35	20,118.22
Stationery and office supplies	10,801.75	1,408.72	885.24	1,603.79	14,699.50	495.14	9,621.95	24,728.99
Copy machines and office press (rental, supplies and upkeep)	37,667.10	1,570.96	932.24	307.41	30,467.71	307.41	2,465.42	33,238.54
Furniture and equipment (rental maintenance, etc.)	14,507.79	2,117.44	787.72	248.48	17,661.45	341.36	3,703.61	21,706.40
Depreciation and amortization (furniture, equipment & leasehold) (Note 1)	10,464.74	984.95	492.45	123.11	12,065.25	246.22	—	12,311.45
Accounting, labor relations and other advisory services	26,568.80	3,221.10	1,228.44	352.11	31,370.45	996.33	664.22	33,211.00
Insurance (multi-peril, lawyers liability, fire, travel, etc.)	8,323.20	783.36	391.68	97.92	9,596.16	195.84	—	9,792.00
Conferences, workshops, meetings and travel	—	61,838.42		4,687.71	66,516.13	561.09	10,100.16	97,181.38
Pamphlets, brochures and other printed material	—	9,756.94		6,535.58	16,292.52		7,066.52	23,359.04
Employees interview, agency fees and moving expenses	11,775.17	1,353.34			13,128.51			13,128.51

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	Program Services					Supporting Services		
	Legal	Community Services	R. I. Education	Public Information	Total Program Services	Management and General	Fund Raising	Total All Programs
Employees overtime expense reimbursements (cabs, etc.)	5,693.15				5,693.15			5,693.15
Payroll and data processing services	3,995.25	499.16	99.83	49.92	4,642.16	149.75	199.66	4,991.57
Pension Trust expenses (Note 4)	11,654.97	1,454.37	290.88	145.44	13,525.66	727.18	290.87	14,543.71
Board directors and committees travel and meetings	—					6,464.26		6,464.26
Newspapers, books and publications	—	25.00			25.00	1,234.49	1,167.75	2,427.24
Other miscellaneous expenses (storage of records, safe-box, etc.)	—	116.56		5.60	122.16	8,225.86	4,687.02	13,035.04
Total expenses, to Statement 4	$2,315,173.17	$ 288,099.53	$ 173,814.90	$ 70,850.82	$2,847,938.42	$ 239,427.30	$ 996,360.42	$4,084,216.14

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See notes to financial statement which are an integral part of these statements.

The Earl Warren Legal Training Program, Inc.

Statement of Revenue and Expenses

FOR THE YEAR ENDED DECEMBER 31, 1978

Recorded Revenue			
Contributions and fund raising for general purposes		$141,150.00	
Contributions and grant for Lawyers Fellowship supervisor		10,000.00	
			$151,150.00
Grants and contributions restricted for Special Projects Programs:			
Law scholarship—Southern schools otherwise restricted and unrestricted (1978 includes $47,400 from LDF for E.W. law scholarships unrestricted) (Note 2)	235,449.22		
Lawyers Fellowships		46,000.00	
Lawyers Training Institute (None held 1978)		—	
			281,449.22
Interest and dividends			224.56
Total recorded revenue			432,823.78
Expenses			
Program services:			
Law scholarships—Southern schools, otherwise restricted and unrestricted	$283,893.36		
Lawyers Fellowships	107,954.89		
Lawyers Training Institute	—		
		391,848.25	
Support services:			
Management and general	19,519.51		
Fund raising	17,370.79		
		36,890.30	
Total expenses			428,738.55
Excess of recorded revenue over expenses, or (expenses over recorded revenue)			$ 4,085.23
Applicable to:			
Restricted Special Project Programs, (excess expenses), to Statement 2	($ 40,729.41)		
General Fund Unrestricted, excess recorded revenue, to Statement 2	44,814.64	$ 4,085.23	

See notes to financial statements which are an integral part of these statements.

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AUDITOR'S REPORT

June 28, 1979

N.A.A.C.P. Legal Defense and Educational Fund, Inc.
10 Columbus Circle (Suite 2050)
New York, New York 10019

Gentlemen:

I have examined the combined and individual Statement of Assets, Liabilities and Fund Balances of

N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
(AND AFFILIATED ORGANIZATION)

as of December 31, 1978 and 1977, and the related combined and individual Statement of Revenue and Expenses, and Statement of Changes in Fund Balances for the year ended December 31, 1978.

My examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as I considered necessary in the circumstances. The Earl

The Earl Warren Legal Training Program, Inc.

Details of Expenses

FOR THE YEAR ENDED DECEMBER 31, 1978

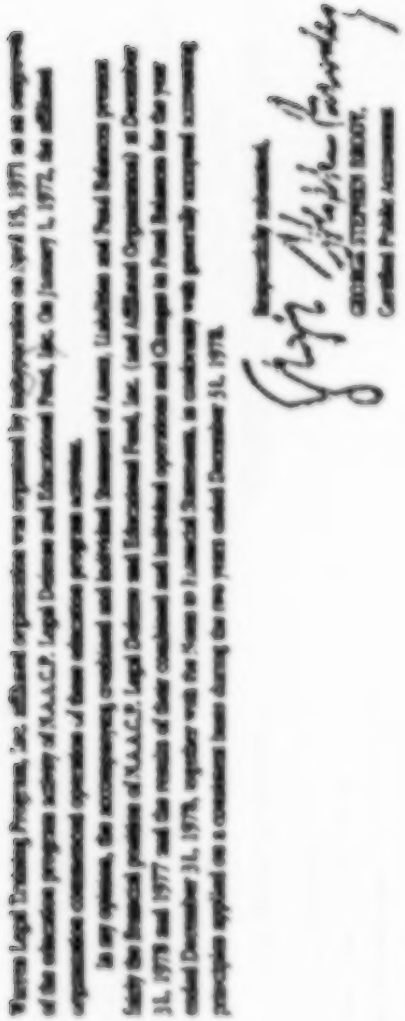
	Program Services				Supporting Services		
	Law Scholarships	Lawyers Fellowships	Lawyers Training Institute (None in 1978)	Total Program Services	Management and General	Fund Raising	Total All Programs
Salaries	$ 65,394.16	$ 11,500.00	$ —	$ 76,894.16	$ 16,600.00	$ —	$ 93,494.16
Payroll taxes and employee benefits	7,445.49	1,276.37	$ —	8,721.86	1,914.56	$ —	10,636.42
Total payroll costs	72,839.65	12,776.37	$ —	85,616.02	18,514.56	$ —	104,130.58
Law scholarship grant awards to various individual recipients (Southern schools, otherwise restricted and unrestricted)	194,953.00	—	—	194,953.00	—	—	194,953.00
Lawyers Fellowships direct expenses (retainer fees, law library, furniture, moving, travel, supervision, etc.)	—	89,344.16	—	89,344.16	—	—	89,344.16
Lawyers Training Institute (chief consultant fees, travel and accommodations at training institute, honorariums, etc.—none held in 1978)	—	—	—	—	—	—	—
Fund raising (salary and expense reimbursements to fund raiser)	—	—	—	—	—	16,847.99	16,847.99

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	Program Services				Supporting Services		
	Law Scholarships	Lawyers Fellowships	Lawyers Training Institute (None in 1978)	Total Program Services	Management and General	Fund Raising	Total All Programs
Rent and office maintenance—National Office	3,477.50	270.48	—	3,748.08	115.92	—	3,864.00
Telephone and communications	2,496.00	405.60	—	2,901.60	156.00	62.40	3,120.00
Postage and mailing	1,056.00	171.60	—	1,227.60	26.40	66.00	1,320.00
Stationery and office supplies	1,572.00	210.00	—	1,782.00	84.00	42.00	1,908.00
Copy machines and other press	864.00	360.00	—	1,224.00	72.00	144.00	1,440.00
Furniture and equipment	450.00	—	—	450.00	—	—	450.00
Accounting and advisory services	2,088.00	4,315.20	—	6,403.20	348.00	208.80	6,960.00
Conferences, workshops, meetings and travel	4,137.11	101.48	—	4,238.59	—	—	4,238.59
Interview expenses lawyers fellowship programs	—	—	—	—	—	—	—
Newspapers, books and publications	—	—	—	—	—	—	—
Other miscellaneous expenses	—	—	—	—	202.63	—	202.63
Total expenses, to Statement 6	$283,895.36	$107,954.89	—	$391,848.25	$ 19,519.51	$ 17,370.79	$428,738.55

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See notes to financial statements which are an integral part of these statements.



N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC. (AND AFFILIATED ORGANIZATION) NOTES TO FINANCIAL STATEMENTS DECEMBER 31, 1978

1. ACCOUNTING POLICIES

The accompanying financial statements have been prepared in accordance with the Standards of Accounting for Voluntary Health and Welfare Organizations and the industry audit guides for Voluntary Health and Welfare Organizations of the American Institute of Certified Public Accountants. Expenditures for furniture and equipment, and leasehold improvements have been capitalized. Depreciation on furniture and equipment is provided on a straight-line basis over the estimated useful lives of the assets. Amortization on leasehold improvements is provided on a straight-line basis over the life of the lease. Depreciation of telephone installation is provided on a straight-line basis over the estimated useful life of the asset. The depreciation of the telephone installation (1978—$11,054; 1977—$11,054) is included in the telephone and communications expense category, this being the consistent policy of the organization. Marketable securities are valued at contribution date, or at acquisition date. All contributions are considered to be available for unrestricted use unless specially restricted by the donor. Bequest receipts are considered as General Fund Income except those bequests of $25,000 or more which are transferred directly to General Fund Unrestricted, which has been the consistent policy of the organization. In 1978 a bequest of $50,000 was received, this being transferred directly to General Fund Unrestricted. In 1975, pursuant to the Board of Directors Resolution, the bequest receipt of $691,015 from Estate of Margaret Abell (partial distribution) was not to be considered as part of General Fund Income, but instead to be transferred to a Reserve for Contingency Fund. In addition, any subsequent receipts representing partial and/or final distribution from the Estate is to be considered in the same manner. Further receipts of $233,465 were received

in 1976-77. Also, pursuant to Board of Directors Resolution, the gain or loss from sale of the marketable securities received in the bequest is to be considered as part of the Reserve for Contingency Fund, but the interest and dividends received is to be included as part of General Fund Income. Purchase of supplies are expensed as incurred and are immaterial in dollar amount.

2. INTER-ORGANIZATION AND INTRA-ORGANIZATION RECEIVABLE AND PAYABLE

LDF-EWLT inter-organization receivable and payable balances are eliminated for combined total purposes. Pursuant to the LDF Board of Directors Resolution dated January 9, 1979, the EWLT indebtedness due to LDF at December 31, 1978 in the amount of $293,484 was to be eliminated on total discharge of EWLT indebtedness due to LDF. LDF General Fund—LDF Restricted Contingency Fund intra-organization receivable and payable balances, at December 31, 1978 of $409,112 are eliminated for combined total purposes. Inter-organization receipt by EWLT Law Scholarships Unrestricted from LDF, and distribution payment by LDF Herbert Lehman education to EWLT Law Scholarship Unrestricted are each eliminated for combined total purposes.

3. PLEDGES RECEIVABLE AND DEFERRED REVENUE

This represents pledges from donors for grants and contributions to be received in various periods after December 31, 1978. In 1978 LDF received a contribution of $7,500 in advance for donor's 1979 commitment.

4. PENSION PLAN

LDF-EWLT has established a qualified employees noncontributory pension and retirement plan initially set-up in July 1964 covering all full time employees who were not over 60 years at original employment date. The organizations are current in the required annual pension contribution payments based on the annual actuarial valuation. Pension trust expenses of $14,543.71 for 1978, and $8,270.90 for 1977, are borne wholly by the employer.

5. LEASE COMMITMENT

Basic minimum annual rental commitments under the rental lease for its office at 10 Columbus Circle is approximately $130,650, exclusive of rent labor adjustment, electric, cleaning and office maintenance services. The lease expires September 30, 1983.

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William O. Walker
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E. Thomas Williams, Jr.
Karen Hastie Williams
Claude "Buddy" Young

*Members, Executive Committee
**Members, Associate Executive Committee

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New York Office

Director-Counsel
Jack Greenberg

Associate Counsel
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First Assistant Counsel
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Assistant Counsel
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Washington, D.C. Office

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Division of Legal Information & Community Services

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Jean E. Fairfax

Deputy Directors
Allen Black, Jr.—San Francisco
Phyllis McClure—Washington, D.C.
Robert Valder—North Carolina

Educational Programs

Herbert Lehman Education Fund

Consultant
Dr. John W. Davis

Earl Warren Legal
Training Program, Inc.

Director
Buder T. Henderson

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Direct Mail
James R. Robinson

Foundations
Ann Dowling

Corporations
Malcolm W. Rucker

Regional Campaigns
John McDonagh

Library Services

Director
Donna S. Gloeckner

General Administration

Comptroller
Peter O. Judd

Personnel Manager
Ivalina Passé

*At October 1, 1979

A RESERVE AND BEQUEST PROGRAM

Bequests enable contributors to perpetuate their support for equal rights through the Legal Defense Fund. A simple form of bequest follows

Form of Bequest:

I give and bequeath _____ dollars to the *NAACP Legal Defense and Educational Fund, Inc.*, a charitable and educational corporation organized under the laws of the State of New York with headquarters located at 10 Columbus Circle, New York, New York 10019, to be used for such purposes as may be determined by the Board of Directors.

Bequests may be made contingent upon the death of another beneficiary, or they may be an amount remaining after other obligations are satisfied. Both outright bequests and trusts can be an important factor in reducing federal estate taxes.

You and your attorney may secure additional information by writing:

Jack Greenberg, Director-Counsel
NAACP Legal Defense Fund
10 Columbus Circle
New York, N.Y. 10019

The NAACP Legal Defense & Educational Fund is not part of the National Association for the Advancement of Colored People although it was founded by it and shares its commitment to equal rights. LDF has had for over 20 years a separate Board, program, staff, office and budget.

The Legal Defense Fund's annual report is on file with the New York State Dept. of State, 162 Washington Avenue, Albany, N.Y. 12231 or at our office.

The Legal Defense Fund is entirely supported by voluntary contributions. Gifts to LDF are tax deductible.

INFORMATION—NOT FOR PUBLICATION

LEGAL DEFENSE FUND
NAACP LEGAL DEFENSE AND
EDUCATIONAL FUND, INC.
10 COLUMBUS CIRCLE, NEW YORK, N.Y. 10019
(212) 586-8397

LEGAL DEFENSE FUND VICTORIES WIN JOBS, HIGHER WAGES, BETTER WORKING CONDITIONS, HOUSING, AND OTHER BENEFITS FOR BLACK WORKERS AND THEIR FAMILIES

11-1-1979

I. Private And Public Employment

The following lists the amount of backpay awards won in a sample of employment discrimination cases brought on behalf of black workers by LDF. In virtually all of these cases back pay was not the primary focus of the litigation. Rather the aim of the cases was to open more and better paying jobs for black workers. This benefit has measurably enhanced the earnings of thousands of black workers represented in the cases listed below. The following are three illustrative cases.

1. The named plaintiff had for years been held in a laborer position. In 1966 when he filed a complaint alleging racial discrimination with EEOC he was earning $4,500.00. LDF subsequently sued on his behalf. The case was finally resolved in 1975. Today he is a journeyman mechanic, earning over $25,000.00.

2. At the time suit was brought, blacks represented less than 5% of all sworn personnel in the city's police and fire departments. After trial the court ordered a 1-for-1 hiring and promotion quota. By the end of 1978 blacks represented over 32% of all sworn personnel. Benefits of this nature are not reflected in the list that follows.

3. In this suit LDF sought to gain access for blacks to truck driving jobs that generally pay $22,000 but can range as high as $50,000. In early 1974 blacks held 70 or less than 2% of these jobs. By October 1974 LDF was successful in obtaining an order that contemplated 1-for-1 hiring until

blacks represent 25% of the workforce. The order also called for back pay of $100,000.00. As of May 1979 there were 497 blacks on the job or 16%.

1. *Andry* v. *Alabama Power* (Alabama) Cash benefits won: $33,750 back pay
2. *Armmer* v. *Memphis Water Gas and Light* (Tennessee) Cash benefits won: $850,000 back pay
3. *Boles* v. *Union Camp Corp.* (paper mill) (Georgia) Cash benefits won: $840,000 back pay (830 black employees)
4. *Boudreaux* v. *Baton Rouge* (Louisiana) Cash benefits won: $17,000 back pay
5. *Branch* v. *Reynolds Metals* (Virginia) Cash benefits won: $80,000 back pay
6. *Bumpers* v. *National Gypsum* (Alabama) Cash benefits won: $150,000 back pay
7. *Burks* v. *Babcock & Wilcox Co.* (Virginia) Cash benefits won: $120,000 back pay
8. *Burrell* v. *Kaiser Aluminum* (Louisiana) Cash benefits won: $255,000 back pay
9. *Cook* v. *Birmingham News* (Alabama) Cash benefits won: $3,064.75 back pay
10. *Cooper* v. *Philip Morris* (Kentucky) Cash benefits won: $140,000 back pay for approximately 90 employees.
11. *Cox* v. *Lenley* (Employment Security Div., Little Rock, Ark.) Cash benefits won: $42,500 back pay
12. *Dreher* v. *St. Joe Minerals Corp.* (Pennsylvania) Cash benefits won: $70,000 back pay (86 black workers)
13. *Duhon* v. *Goodyear Tire* (Texas) Cash benefits won: $122,783.50 back pay
14. *EEOC* v. *Container Corp.* (Florida) Cash benefits won: $240,000 back pay
15. *Ellis* v. *NARF* (Dept. of the Navy) (California) Cash benefits won: $500,000 back pay
16. *Ellison* v. *Rockhill Printing and Finishing Co.* (South Carolina) Cash benefits won: $314,000 back pay (312 black workers)

17. *English* v. *Seaboard Coastline R.R.* (Georgia) Cash benefits won: $289,000 back pay
18. *Fair* v. *Southern Electric Generating Co.* (Alabama) Cash benefits won: $115,000 back pay
19. *Faison* v. *ITT Rayonier* (Florida) Cash benefits won: $310,000 back pay
20. *Fisher* v. *Cities Service Oil Co.* (Louisiana) Cash benefits won: $1,750,000 back pay for approx. 300 black employees
21. *Gamble* v. *Southern Birmingham R.R. Co.* (sub. of U.S. Steel, Alabama) Cash benefits won: $120,000 to 43 black employees
22. *Green* v. *Warrior and Gulf* (Alabama) Cash benefits won: $60,000 back pay
23. *Jones* v. *Armstrong Cork Co.* (Georgia) Cash benefits won: $295,000 back pay
24. *Johnson* v. *City of Albany, Ga.* (Georgia) Cash benefits won: $515,000 to 200 black employees
25. *Johnson* v. *Goodyear Tire* (Texas) Cash benefits won: $200,000 back pay
26. *King* v. *Georgia Power* (Georgia) Cash benefits won: $250,000 back pay
27. *McHoney* v. *Colloway* (Dept. of the Army) (New York) Cash benefits won: $23,000 back pay
28. *Moody* v. *Albermarle Paper Co.* (North Carolina) Cash benefits won: $205,000 back pay for 140 black employees
29. *Mosley* v. *General Motors* (Missouri) Cash benefits won: $40,000 for 12 black employees
30. *Muldrow* v. *H.K. Porter* (Alabama) Cash benefits won: $200,000 back pay
31. *Munn* v. *Kimberly-Clark* (North Carolina) Cash benefits won: $750,000 for class of women and 60 blacks
32. *Myers* v. *Gilman Paper Co., St. Mary's, Ga.* (Georgia) Cash benefits won: $300,000 for 300 black employees
33. *Oglesby* v. *McLean Trucking* (South Carolina) Cash benefits won: $15,000 back pay

34. *Patterson* v. *Newspaper and Mail Deliverers' Union of New York and Vicinity* (New York) Cash benefits won: $100,000 to 19 black employees
35. *Pettway* v. *American Cast Iron Pipe and Foundry Co.* (Alabama) Cash benefits won: $1,000,000 to 833 black employees
36. *Powell* v. *Georgia Pacific* (Arkansas) Cash benefits won: $81.62 back pay per year of employment
37. *Reynolds* v. *Coomey* (U.S. Immigration Service) (Massachusetts) Cash benefits won: $5,000 back pay for black employee; plus promotion from GS-5 to GS-9
38. *Rock* v. *New York Telephone* (New York) Cash benefits won: $15,000 back pay 3 black employees
39. *Rock* v. *Norfolk & Western Ry. Co.* (Virginia) Cash benefits won: $1,100,000 back wages for 209 black workers plus $125/month guaranteed pay increment for approx. 69 black workers
40. *Rogers* v. *International Paper Co.* (Arkansas) Cash benefits won: $135,000
41. *Sharpe* v. *Ziegler* (Alabama) Cash benefits won: $3,000
42. *Stevenson* v. *International Paper Co.* (Alabama) Cash benefits won: $653,000 back pay (partial settlement)
43. *Suggs* v. *Container Corp.* (Alabama) Cash benefits won: $92,000 back pay
44. *Sullivan* v. *Winn-Dixie* (South Carolina) Cash benefits won: $132,500 back pay
45. *Terrell* v. *U.S. Pipe Co.* (Birmingham, Ala.) Cash benefits won: $500,000 back pay (partial settlement)
46. *Torrence* v. *First National Banks* (Arkansas) Cash benefits won: $233,000 back pay
47. *Walker* v. *Ralston Purina* (Georgia) Cash benefits won: $70,000 back pay
48. *Watkins* v. *Scott Paper Co.* (Alabama) Cash benefits won: $750,000 for a class of approx. 300
49. *Wolf* v. *Continental Teladyne* (Alabama) Cash benefits won: $20,000 back pay

50. *Younger* v. *Glamorgan, Lynchburg, Va. Foundry* (Virginia) Cash benefits won: $100,000 to 35 black employees

II. Teachers Discrimination Cases

51. *Hardy* v. *Porter* (Mississippi) Cash benefits won: $7,200 back pay
52. *Hunt* v. *Taggart* (Arkansas) Cash benefits won: $13,000 back pay
53. *Moore* v. *Tangipahoa Parish School Board* (Louisiana) Cash benefits won: $150,000 to 7 black teachers
54. *Singleton* v. *Vance County Bd. of Education* (North Carolina) Benefits won: Reinstatement; 2 years back pay under consideration
55. *Williams* v. *Anderson* (Arkansas) Cash benefits won: $100 back pay each for 4 black teachers

III. Housing Discrimination Cases

56. *Fox* v. *Wilkinson* (North Carolina) Benefits won: $1,000 damages for refusal to rent
57. *Frost* v. *New Star Homes and Rizzo* (New York) Benefits won: $520 damages for refusal to sell
58. *Gandy* v. *Pierson Suburban Realty of Wilmington* (North Carolina) Benefits won: $2,000 damages and consent decree
59. *Grier* v. *Hunter* (North Carolina) Benefits won: $700 damages
60. *Howard* v. *Watson* (Tennessee) Benefits won: Compensatory damages
61. *Kelly* v. *Leon Lepold* (Wisconsin) Benefits won: $5,000 damages
62. *Sanford* v. *Coleman Realty Co.* (North Carolina) Benefits won: $4,000 compensatory and punitive damages
63. *Sanford* v. *Corbin* (North Carolina) Benefits won: $6,000 punitive and compensatory damages
64. *Sanford* v. *Hoover* (North Carolina) Benefits won: $1,500 damages

IV. Affirmative Action

D.P.O.A. v. *Young* and *Baker* v. *City of Detroit* (Michigan)

In addition to cases in which LDF has forced employers to broaden the employment and job advancement opportunities of blacks, we are increasingly involved in cases where employers have voluntarily implemented affirmative action programs only to be sued by white workers seeking to turn back the clock. For example, in Detroit, at the urging of Mayor Coleman Young, the Police Department, in 1974, implemented an affirmative action program that called for 1-for-1 promotions at all levels. That program has thus far resulted in increases of black officers at the rank of sergeant from 48 (4%) to 145 (16%) and at the rank of lieutenant and above from 23 (7%) to 80 (28%). White officers brought two lawsuits. One resulted in a victory for the white officers. At that point the City called on LDF for help. LDF took over the appeal of the first case and also the trial of the second. On October 12, 1979 the appeals court nullified the victory of the white officers. Twelve days earlier the trial court in the second case accepted the City's justification for the program and noted its intention to dismiss the lawsuit of the white officers. Thus, unless the Supreme Court rules otherwise, Detroit's affirmative action plan will continue until the police department is reflective of the population it serves.

V. Health and Hospital

Hatcher v. *Methodist Hospital*

For example in the area of hospitals, when the only remaining major hospital in Gary, Indiana announced plans to move to the all-white suburbs, LDF, responding to the call of black Gary residents, brought suit. As a result the hospital was forced not only to keep the city hospital open, but to spend $18 million to upgrade it.

VI. Miscellaneous

65. *Jones* v. *Teddar* (South Carolina) Benefits won: Challenge to city council election system; 2 black councilmen elected.

66. *Coker* v. *Georgia* (Georgia) Benefits won: Death penalty for rape abolished 433 U.S. 584 (1977)
67. *James* v. *Stockham Valves & Fittings, Inc.* (Alabama) Benefits won: Class of 1500 Blacks. Preventing further discrimination in apprentice recruiting, hiring, employment testing and promotion practices, back pay and retroactive seniority to members of the class.

The above listed cases represent only a small fraction of the cases brought by LDF in recent years. This list is intended simply to illustrate some of the results of LDF's efforts.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., ET AL., PLAINTIFFS,

v.

HON. DONALD J. DEVINE, DIRECTOR, UNITED STATES OFFICE OF PERSONNEL MANAGEMENT, DEFENDANT

AFFIDAVIT OF EMANUEL OWENS

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

EMANUEL OWENS, being duly sworn, deposes and says:

1. I am presently employed by the NAACP Legal Defense and Educational Fund, Inc. as coordinator of its Combined Federal Campaign. I was hired into this position in the fall of 1981 and have held it continously since.

2. Of necessity I have kept track of all cash and pledge information received by LDF through the CFC. As of this date, LDF has received designated contributions, primarily from the 1981 CFC, from 131 of approximately 211 localities consisting of the following:

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
1981-1982 COMBINED FEDERAL CAMPAIGN
CASH RECEIPTS—MARCH 1983

ALABAMA		
Birmingham		$3,109.28
Montgomery		796.63
Tuscaloosa		246.97
Tuskegee		650.94
Selma		8.25
	TOTAL $	4,811.97

ALASKA		
Anchorage		1,960.69
	TOTAL $	1,960.69
ARIZONA		
Fort Huachuca		508.67
Tucson		600.60
	TOTAL $	1,109.27
ARKANSAS		
Blytheville		318.89
North Little Rock		500.00
	TOTAL $	818.89
CALIFORNIA		132.39
Barstow		
China Lake		2,311.29
Corona		66.81
Hanford		86.45
Los Angeles		8,471.28
Riverside		791.69
Sacramento		342.30
San Bernardino		795.42
San Diego		1,933.43
San Francisco		4,302.80
Santa Ana		1,272.00
Santa Maria		418.35
Santa Rosa		512.40
Twentynine Palms		693.90
Vallejo		1,318.17
Vandenberg AFB		110.70
Victorville		369.76
	TOTAL $	23,928.14
CONNECTICUT		
Bridgeport		15.02
	TOTAL $	15.02
DELAWARE		
Dover		824.47
	TOTAL $	824.47
FLORIDA		
Cocoa	$	780.20
Fort Myers		45.50
Jacksonville		1.82

FLORIDA (Continued		
Key West		291.97
Miami		1,457.37
Milton		75.52
Orlando		3,543.00
St. Petersburg		138.35
Tampa		569.13
	TOTAL $	6,902.86
GEORGIA		
Athens		27.10
Augusta		2,601.81
Columbus		854.79
Savannah		3,465.58
Valdosta		315.96
	TOTAL $	7,274.24
HAWAII		
Honolulu		3,331.12
	TOTAL $	3,331.12
ILLINOIS		
Chicago		8,274.56
Champaign		369.49
Waukegan		1,488.24
	TOTAL $	10,132.29
INDIANA		
Crane		83.69
Grissom AFB		282.00
	TOTAL $	365.69
IOWA		
Iowa City		11.64
	TOTAL $	11.64
KANSAS		
Pittsburg		.60
	TOTAL $	.60
KENTUCKY		
Fort Campbell	$	2,552.52
Fort Knox		1,612.39
Frankfort		94.73
	TOTAL $	4,820.41

LOUISIANA		
Alexandria		420.02
Baton Rouge		301.10
Bossier City		540.61
Fort Polk		294.89
Lafayette		152.75
Lake Charles		198.52
	TOTAL $	1,907.89
MARYLAND		
Bryans Road		226.14
Frederick		371.34
St. Mary's County		340.82
	TOTAL $	938.30
MICHIGAN		
Battlecreek		290.25
Detroit		7,944.14
Flint		15.70
Kalamazoo		160.08
Saginaw		35.89
Wurtsmith AFB		111.12
	TOTAL $	8,557.18
MISSISSIPPI		
Jackson		500.00
	TOTAL $	500.00
MISSOURI		
Columbia		137.64
Fort Leonard Wood		1,214.60
Jefferson City		270.09
St. Louis		2,335.40
	TOTAL $	3,957.73
MONTANA		
Missoula		16.46
	TOTAL $	16.46
NEVADA		
Las Vegas		1,165.85
	TOTAL $	1,165.85

NEW JERSEY		
Camden		77.11
Dover		46.11
Fort Monmouth		221.22
Trenton		104.52
	TOTAL $	448.96
NEW YORK		
Melville		641.95
New York City		2,983.61
Poughkeepsie		69.18
Rome		36.42
Syracuse		178.00
Waterloo		204.73
Watertown		41.60
West Point		449.96
	TOTAL $	4,605.45
NORTH CAROLINA		
Asheville		256.96
Camp LeJeune		2,580.96
Durham		223.08
Goldsboro		878.32
Raleigh		1,686.53
Winston		234.02
	TOTAL $	5,859.87
NORTH DAKOTA		
Grand Fork		432.22
	TOTAL $	432.22
OHIO		
Cincinnati		3,430.52
Mansfield		194.90
Newark		498.05
	TOTAL $	4,123.47
OKLAHOMA		
Lawton		1,974.31
McAlester		9.48
Oklahoma City		3,422.96
	TOTAL $	5,406.75

OREGON		
Eugene		135.14
	TOTAL $	135.14
PENNSYLVANIA		
New Castle		88.11
Pittsburgh		519.03
Tobyhanna		85.53
	TOTAL $	692.67
RHODE ISLAND		
Providence		413.98
	TOTAL $	413.98
SOUTH CAROLINA		
Columbia		167.81
Greenville		11.40
Sumter		3,460.43
	TOTAL $	3,639.07
SOUTH DAKOTA		
Rapid City		354.34
	TOTAL $	354.34
TENNESSEE		
Cumberland City		52.34
Gallatin		36.52
Knoxville		195.72
Memphis		1,162.81
	TOTAL $	1,447.39
TEXAS		
Corpus Christi		302.05
Dallas		1,316.05
El Paso		1,332.61
Fort Hood		4,972.09
Marlin		17.73
Texarkana		392.33
Wichita Falls		816.52
	TOTAL $	9,149.38

VIRGINIA		
King George		236.79
Petersburg		729.05
Richmond		3,511.48
Winchester		8.27
	TOTAL $	4,485.59
WASHINGTON		
Seattle		949.34
Bremerton		102.26
	TOTAL $	1,051.60
WEST VIRGINIA		
Beckley		6.56
Huntington		127.52
Martinsburg		71.98
	TOTAL $	206.06
WASHINGTON D.C.		
		45,569.06
	TOTAL $	45,569.06
TOTAL VERIFIED CASH RECEIPTS:	$	171,418.00
TOTAL UNVERIFIED CASH RECEIPTS:	$	55,228.51*
TOTAL CASH RECEIPTS:	$	226,597.00
TOTAL VERIFIED PLEDGE RECEIPTS:	$	225,500.00
TOTAL VERIFIED PLEDGE RECEIPTS OUTSTANDING:	$	54,082.00

* National Service Agency/Central Receipt Point reported substantial pledges to LDF for 1981-1982 CFC remain unverified, and should not be reflected in "Verified Cash Receipts" total until origin has been verified.

3. 1983 Combined Federal Campaign Income Projection for LDF

Based on analysis of amounts pledged to date in the 1982 CFC, NAACP/LDF can reasonably expect from $300,000 to $350,000 from the CFC in 1983:

a) The total amount pledged to LDF in eight local campaigns, reporting final totals pledged for 1982-1983, show a 20% increase over total pledges for 1981-1982 campaign.

b) LDF should receive from 0.5% to 1.5% of the total designated amount pledged to it in some 32 local campaigns as its share of that local campaign's undesignated fund pool.

c) Total national CFC receipts have increased 7% over total receipts pledged for 1981-1982 campaign year.

4. Therefore, from late 1981 through the end of 1983, the NAACP/LDF should have received between $525,000 and $575,000 from *designated* donations by federal employees and military personnel through the Combined Federal Campaign. Although it is difficult to obtain precise numbers of contributors they can be reasonably estimated to be 10,000-20,000 individual donors.

/s/ Emanuel Owens
EMANUEL OWENS

Sworn to and subscribed before
me this 23rd day of March, 1983.

/s/ Gloria A. Jones
Notary Public

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., ET AL., PLAINTIFFS,

v.

DONALD DEVINE, DIRECTOR, UNITED STATES OFFICE OF PERSONNEL MANAGEMENT, DEFENDANT.

AFFIDAVIT OF ROBERT L. BECKER

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ROBERT L. BECKER, being duly sworn, deposes and says:

1. I am an Associate Counsel employed by the Puerto Rican Legal Defense and Education Fund, Inc. ("PRLDEF"), one of the plaintiffs in this action, and submit this affidavit in support of plaintiffs' motion for summary judgment and a preliminary injunction.

2. As Associate Counsel I am fully familiar with the activities of PRLDEF generally. In addition, I am completely familiar with PRLDEF's activities vis-a-vis the Combined Federal Campaign ("CFC") since I have been responsible both for the litigation efforts, and the actual fund-raising efforts connected with the CFC.

3. Annexed hereto is an affidavit of M. D. Taracido, sworn to the 25th day of November, 1980, which was submitted in support of earlier litigation to gain acceptance into the CFC. It explains in detail how PRLDEF's litigation and non-litigation activities provide direct benefits and services of a health or welfare nature to identifiable individuals. I have knowledge, either personally or from having

reviewed records and files of PRLDEF, of all of the factual statements contained in that affidavit and, accordingly, incorporate it herein by reference.

4. The activities of PRLDEF's Education Division, as discussed in the Taracido affidavit, have remained essentially the same since that time although the number of people served has increased. PRLDEF's litigation activities have continued to emphasize the areas referred to in the Taracido affidavit and have also included litigation in the area of voting rights. Thus, through PRLDEF's efforts, large numbers of additional identifiable individuals have secured the opportunity to obtain or retain employment, have been afforded new and improved housing accommodations and have received increased access to improved bilingual education and increased access to government benefits. In each of these instances, specific and identifiable individuals have obtained specific and concrete benefits.

5. PRLDEF does not engage in any political activities. Its inclusion, therefore, in the CFC would not contravene Section 2(b)(1) of the Executive Order which requires avoiding the reality and appearance of using Federal resources to assist in fund-raising for political activities. The litigation that PRLDEF has been involved in over the last two years pursuant to the Voting Rights Act, 42 U.S.C. §1971 *et seq.*, has not had as its objective the "influenc[ing] [of] outcomes of elections" prohibited by Section 2(b)(3) of the Executive Order. The purpose of this litigation, which has been brought in New York, Pennsylvania, Connecticut and Illinois during the last two years, has been to prevent Hispanic voters from being discriminated against in the election process on the basis of their language or nation origin and also to insure that their vote is meaningful and effective. Moreover, this litigation, largely successful, has simply sought to enforce various rights Congress mandated in enacting the Voting Rights Act.

6. The foregoing discussion also serves as an example to demonstrate that PRLDEF does not seek to influence the determination of public policy matters through litigation which is also prohibited by Section 2(b)(3). Whether in the area of voting rights, employment or housing discrimina-

tion or access to government benefits or services, PRLDEF seeks to insure that the public policy of this country, as *already* expressed by Congress, is carried out and that the people on whose behalf these public policies have been enacted, receive the benefits that were intended.

7. PRLDEF does not maintain an office in Washington, D.C. and does not engage in lobbying to affect public policy, an activity also prohibited by Section 2(b)(3) of the Executive Order. In isolated instances during its 10 year history PRLDEF has been requested by Congressional committees, particularly in the area of education, to provide testimony on pending legisiation.

8. PRLDEF has not yet received any significant information concerning contributions from the just completed 1982-1983 CFC. For the 1981-1982 CFC, the first in which PRLDEF was permitted to participate, it only applied to a limited number of local campaigns because of a severe lack of time. Nevertheless, the record of contributions received shows that there were federal workers throughout the country who were interested and willing to contribute to PRLDEF's efforts. Even though the great majority of Puerto Ricans live in the Northeast and Midwest, PRLDEF was accepted into, and received contributions from, campaigns in the Southeast, Northwest and West, for example. Approximately 5% of the contributions to PRLDEF came from as far away as Honolulu, Hawaii. This demonstrates a genuine interest on the part of federal workers, when the opportunity is made available, to contribute to PRLDEF's efforts to eliminate discrimination against Hispanics.

9. As noted above, I have been PRLDEF's sole contact person for all CFC matters. During this time I have not received any complaints, either from federal workers or local federal coordinating groups, that PRLDEF's participation in the CFC has damaged or jeopardized the successful operation of the CFC. To the contrary, it is my understanding that there has been increased participation and contributions during the two campaigns in which PRLDEF and other similar charities have been admitted.

WHEREFORE, it is respectfully requested that plaintiffs' motion for summary judgment and a preliminary injunction be granted.

/s/ Robert L. Becker
ROBERT L. BECKER

Sworn to before me this
day of March, 1983.

LIZETTE A. CANTRES
Notary Public

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 80-1888

NAACP LEGAL DEFENSE AND
EDUCATIONAL FUND, INC., PLAINTIFF,

v.

HON. ALAN CAMPBELL, DIRECTOR,
UNITED STATES OFFICE OF PERSONNEL MANAGEMENT,
DEFENDANT.

CIVIL ACTION NO. 80-2070

PUERTO RICAN LEGAL DEFENSE AND
EDUCATION FUND, INC., PLAINTIFF,

v.

HON. ALAN CAMPBELL, DIRECTOR,
UNITED STATES OFFICE OF PERSONNEL MANAGEMENT,
DEFENDANT.

AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

STATE OF NEW YORK)
) S.S.·
COUNTY OF NEW YORK)

M. D. TARACIDO, being duly sworn, deposes and says:

1. I am the President and General Counsel of plaintiff Puerto Rican Legal Defense & Education Fund, Inc. ("PRLDEF") and submit this affidavit in support of plaintiffs' motion for summary judgment in the above captioned consolidated actions.

2. Defendant's rejection of PRLDEF's application to participate in the Combined Federal Campaign ("CFC") on the basis that it does not provide "direct services . . . in the field of health and welfare services" is not supported by the

documents and information submitted in connection with its application.

3. PRLDEF's litigation activities in the areas of employment, education, housing and access to government benefits and services provide direct benefits and services to identifiable individuals. To suggest, as defendant does, that because PRLDEF's litigation efforts also seek to eliminate pervasive discrimination, it does not provide direct services is simply incorrect. Similarly, the fact that much of PRLDEF's litigation is brought in the form of class action suits, does not detract from the direct nature of the benefits and services provided. Indeed, it has been the judgment of PRLDEF that, with only six full time staff attorneys, its efforts would serve and benefit a far greater number of people through the vehicle of class action litigation than by litigation solely on behalf of individuals. Moreover, it is undisputed that in its class action litigation, PRLDEF represents all members of the proposed or certified class. Some of the cases discussed in PRLDEF's application make it evident that numerous individual people directly benefit from these activities.

4. PRLDEF's early venture into the area of bilingual-bicultural education in *Aspira* v. *New York City Board of Education* resulted in providing and assuring an equal educational opportunity to over 100,000 Puerto Rican and other Hispanic children, as well as thousands of other non-English speaking children in the New York City School System. PRLDEF continues, to this day, to monitor the consent decree to insure that students presently entering the system are provided with an equal educational opportunity. In the area of housing, PRLDEF expects to go to trial in February, 1981, on behalf of plaintiffs contesting discriminatory practices in connection with the sale of almost 4,500 low income cooperative units. PRLDEF's recent victory in *The Guardians Association* v. *Civil Service Commission of the City of New York*, affirmed in substantial part by the Second Circuit, is presently resulting in the hiring as police officers of black and Hispanic persons who would not have otherwise been called for appointment. Finally, PRLDEF's continuing efforts in *Mendoza* v. *Blum*

have resulted in the hiring of 272 bilingual workers by the New York City Department of Social Services, thereby making the benefits and services of that agency accessible to thousands of non English-speaking persons heretofore prevented from receiving such benefits and services.

5. Direct services are also provided by PRLDEF to numerous individuals through non litigation activities, most notably the activities of the Education Division. Defendant's repeated reference, in this regard, to a one sentence statement in PRLDEF's 1979 Annual Report that "litigation continues to be of primary importance to the overall mission of the Fund" overlooks all of the additional activities in which direct services are provided.

6. The work of PRLDEF's Education Division is structured around three different areas. Its pre-admissions program concentrates on encouraging and assisting young men and women in gaining admission to law school. Its activities include sponsoring an LSAT prep course several times a year, organizing writing workshops and providing advice and counseling. It is estimated that these activities are provided to almost 300 prospective law school applicants each year. Evidence of its effectiveness is demonstrated by the fact that law school enrollment for Puerto Ricans has increased from about 90, prior to PRLDEF's creation, to over 450 at the present time.

7. The second area of involvement by the Education Division is its post admissions program. Three specific activities are included within this area. PRLDEF operates an internship program for ten weeks each summer during which three law students work full time with staff attorneys to gain exposure to the practice of law generally and to civil rights law in particular. These students are paid a weekly salary and the Fund spends over $6,000 per year in operating this program to encourage law students to pursue a career in civil rights litigation. PRLDEF also awards scholarships each year to assist minority students in pursuing their legal careers. Generally there are 15 scholarship recipients annually who receive a total of approximately $12,000. Finally, the Education Division is in the process of establishing a network of law students to provide peer

counseling and substantive law counseling for students enrolled in law school. When fully operational, it is estimated that this program will assist about 150 students annually, throughout the northeast.

8. The third area of involvement by the Education Division is in professional development and training. These activities include a Visiting Attorney Fellowship program in which three recent law school graduates are selected each year to work at PRLDEF to gain experience in the practice of civil rights litigation, with the ultimate objective of increasing the number of Hispanic attorneys practicing law in the area of civil rights. Through the payment of salaries and other related expenses, PRLDEF now spends over $60,000 a year on this program. The professional development and training program also includes the provision of stipends to five law school graduates each year totaling approximately $3,000 to meet living expenses for a two month period while they study for the Bar Exam. Lastly, the Education Division is now in the process of developing seminars in civil rights law for practicing attorneys so that a network of cooperating attorneys can be created to provide additional legal assistance to persons who have suffered discrimination, particularly in the areas of employment and housing. It is anticipated that some 200 lawyers will participate in this seminar series.

9. PRLDEF is in the process of publishing its first of a series of quarterly newsletters which will be distributed nationally to Puerto Rican and other civil rights lawyers and non lawyers active in the civil rights field. The purpose of the newsletter is two-fold. First, to provide others working in the civil rights field with substantive information to assist them in their work. Second, to appraise others of PRLDEF's activities as a way of generating additional opportunities for PRLDEF to make its services available.

10. PRLDEF has, almost since its inception, also been engaged in an extensive referral and information program. Calls are continuously received both from individuals seeking advice and information regarding their legal rights and from attorneys throughout the country seeking assistance in areas of expertise possessed by Fund attorneys.

The assistance provided through this activity ranges from simple referrals to the preparation of legal memos.

11. During the past year PRLDEF has also embarked on an effort to handle, through litigation, a limited number of individual complaints of discrimination. This change in emphasis recognizes that individual actions not only benefit the particular individual involved, but may also provide a vehicle for affecting and benefiting larger number of persons as is the case with class action litigation. The decision to accept individual cases was also motivated by a desire to enhance the experience of the participants in the Visiting Attorney Fellowship program.

12. The foregoing amply demonstrates that almost all of the activities of the Puerto Rican Legal Defense and Education Fund, Inc. are designed to and do provide direct benefits or services to individuals.

WHEREFORE, it is respectfully requested that plaintiffs' motion for summary judgment be granted.

/s/ M. D. Taracido
M.D. TARACIDO

Sworn to before me this
25th day of November, 1980.

/s/ Robert L. Becker
Notary Public

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action NO. 83-

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., ET AL., PLAINTIFFS,

v.

HON. DONALD J. DEVINE, DIRECTOR, UNITED STATES OFFICE OF PERSONNEL MANAGEMENT, DEFENDANT

AFFIDAVIT OF VALERIE V. AMBLER

STATE OF NEW YORK)
SS.:
COUNTY OF NEW YORK)

VALERIE V. AMBLER, being duly sworn, deposes and says:

1. I am presently a member of the Board of Directors of the Federally Employed Women Legal Education Fund, Inc. I am an attorney in private practice and have been involved in litigation in the District of Columbia involving Title VII cases on behalf of federal employees.

2. From 1976 to 1981 I served as the first president of the Federally Employed Women Legal Education Fund, Inc. FEWLEF was set up as a charitable tax-exempt organization for the specific purpose of assisting federal employees to seek vindication of their rights under the civil rights statutes, particularly with regard to claims of employment discrimination and to perform educational services for federal employees related to employment discrimination. FEWLEF was approved by the Internal Revenue Service as a tax-exempt organization eligible for charitable donations under the Internal Revenue Code.

3. The work of FEWLEF is carried out largely through support or involvement in litigation brought under the Civil Rights Act of 1964, as amended, the Civil Service Reform Act of 1978, and/or the Equal Pay Act. Thus, FEWLEF is

engaged in activities designed to carry out and implement the public policy of the United States as established by acts of Congress. We do very little legislative work, and any that we do is in full conformity with the limitations of the Internal Revenue Code and IRS regulations.

4. As a new organization FEWLEF experienced difficulties in raising funds. Much of the efforts of the Board of Directors, which was composed of volunteers who were both federal employees and persons privately employed, were directed towards developing sources of income and laying plans for establishing a full program. Relatively small amounts of funds were raised in the first few years of FEWLEF's existence.

5. In 1981, following the order of this Court *NAACP Legal Defense and Educational Fund, Inc.* v. *Campbell*, 504 F. Supp. 1365 (D.D.C. 1981), FEWLEF applied for admission to the Combined Federal Campaign. The organization was admitted for both the fiscal year 1981 and 1982 campaigns.

6. To my knowledge FEWLEF is the only organization in the Combined Federal Campaign whose purposes are specifically and exclusively related to enforcement of the rights of federal employees. We received in contributions from the 1981 campaign more than $30,000 from federal employees in a number of localities. This amount was significantly greater than any amounts we have been able to raise before, since we were now able to directly appeal to our natural constituency. As a result of the funds received from the Combined Federal Campaign, FEWLEF has been able to hire staff and begin to develop a full program of legal and educational activities which will increase our ability to respond to the needs of federal employees who are suffering discrimination in employment.

7. If we are excluded from the Combined Federal Campaign it will be extremely difficult for us to raise comparable amounts of money. A much greater proportion of the funds we raise and the efforts of the organization will have to go to fund raising activities, with the result that a smaller proportion of the organization's resources will be able to be used for its program. The net result will be that

federal employees will receive fewer services from FEWLEF than if we were permitted to continue our participation in the Combined Federal Campaign.

/s/ Valerie V. Ambler
VALERIE V. AMBLER

Sworn to and subscribed before
me this 23rd day of March, 1983.

/s/ Gloria A. Jones
Notary Public

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., ET AL., PLAINTIFFS

v.

DONALD DEVINE, DIRECTOR UNITED STATES OFFICE OF PERSONNEL MANAGEMENT, DEFENDANT

AFFIDAVIT OF ROBERT T. COULTER

DISTRICT OF COLUMBIA

SS.:

CITY OF WASHINGTON

ROBERT T. COULTER, being first duly sworn, deposes and says:

1. I am the Executive Director of the Indian Law Resource Center. I serve as the principal executive officer, as a member of the Board of Directors, and as the lead attorney for the Center. As such I have detailed knowledge of the Center's purposes, programs, and operations.

2. The Indian Law Resource Center is a not-for-profit corporation under the laws of the District of Columbia. The Center is a charitable and educational organization under Section 501(c)(3) of the Internal Revenue Code as determined by the Internal Revenue Service.

3. The purpose of the Center is to defend the human, civil, and other legal rights of Indian peoples, particularly those in financial need, by providing legal advice and assistance. The Center carries on programs of education and research for the purpose of combatting prejudice and discrimination against Indian peoples. The Center carries on and sponsors research and study in the fields of law and history relating to Indians and carries on public educational activities in these fields.

4. The Center's work particularly concerns the rights of Indian peoples, especially Indian tribes and governments,

as established or guaranteed by treaties, by the United States Constitution and other federal statutes and law. In all cases the Center represents Indian groups or individuals who could not afford to pay attorneys in private practice.

5. Litigation is a relatively small part of our work, accounting for less than 25% of our budget. Most of the litigation the Center handles is for the purpose of defending or protecting Indian land rights. These cases typically are massive in nature, lasting many years, and the Center's clients are usually one of many parties in each case.

6. The Center carries on much work in the nature of non-judicial dispute resolution. We most often assist clients in achieving out-of-court settlements of their cases and disputes.

7. The Center also writes and distributes articles for publication dealing with topics of Indian rights and the law affecting Indian peoples. These articles are for general public and professional legal education.

8. The Indian Law Resource Center is not a political action or advocacy organization within the meaning of the Internal Revenue Code or otherwise. The Center virtually never conducts any lobbying activity as such, and all activity relating to legislation is in full conformity with the Internal Revenue Code and the regulations of the Internal Revenue Service. From time to time the Center is requested to provide information to various committees of Congress relating to bills affecting Indian rights.

9. The Center conducts no activity whatsoever relating to elections.

10. The end result of our work is to provide concrete benefits to Indian communities and individuals-benefits such as health care and needed economic resources such as land or increased control of Indian resources. Yet our work seeks to benefit the public more broadly through helping to preserve Indian cultures, communities, religions, and other elements of Indian heritage, and through increased public understanding about Indian history and Indian rights.

11. The Center is supported entirely by grants and contributions from foundations, churches, and individuals. The

Center neither solicits nor accepts any government grants or contracts.

12. The Center received known pledges of more than $40,000 in the 1981 Campaign, although we were able to apply to participate in only about half of the local campaigns. Thus, Combined Federal Campaign contributions make up about between 10% and 14% of our annual budget of about $270,000.

/s/ Robert T. Coulter
ROBERT T. COULTER

Sworn to and subscribed before
me this 29th Day of March, 1983.

/s/ [Illegible]
Notary Public

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., ET AL., PLAINTIFFS,

v.

HON. DONALD J. DEVINE, DIRECTOR, UNITED STATES OFFICE OF PERSONNEL MANAGEMENT, DEFENDANT.

AFFIDAVIT OF WILLIAM L. ROBINSON

IN THE
SS.:
DISTRICT OF COLUMBIA

WILLIAM L. ROBINSON, being duly sworn according to law, deposes and says:

1. I am an attorney admitted to the bar of the District of Columbia, the State of Ohio, and admitted to practice before the Supreme Court of the United States, most of the United States Courts of Appeals, and various federal district courts.

2. Since October, 1979 I have served as Director of the Lawyers' Committee for Civil Rights Under Law. In this capacity I am the chief operating officer of the organization, responsible for the day-to-day administration of its program and the work of its staff, and reporting to its Board of Directors. I am also responsible for overall planning and execution of fund-raising activities for the Lawyers' Committee.

3. The Lawyers' Committee for Civil Rights Under Law is a national organization originally founded in 1963 at the request of the President of the United States. The Committee seeks to mobilize the *pro bono*, voluntary services of the private bar in the United States to assist victims of invidious discrimination on the basis of race, ethnic origin or

sex to obtain redress. The staff of the Lawyers' Committee has directly represented such individuals in litigation and the Committee also has undertaken a variety of educational and other activities to provide assistance to minority, impoverished and disadvantaged persons throughout the United States. The Committee is a non-profit charitable corporation incorporated in the District of Columbia which is exempt from federal income taxation pursuant to 26 U.S.C. §501(c)(3) and contributions to which are deductible from individuals' taxable incomes pursuant to 26 U.S.C. § 170(c).

4. In 1968 the Lawyers' Committee began an "Urban Areas Project" designed to replicate its activities on the local level in a dozen cities across the country. This effort resulted ultimately in the establishment of a number of local committees, all but one of which have been separately incorporated, have obtained separate tax-exempt status pursuant to 26 U.S.C. § 501(c)(3), and are financially independent of the (national) Lawyers' Committee. The single exception, the Washington, D.C. Lawyers' Committee for Civil Rights Under Law, works in the D.C. metropolitan area but is part of the national Lawyers' Committee for accounting and tax exemption purposes. The Washington Committee has its own Board of Directors and staff Director, and conducts its own earmarked fund-raising, but works closely with the national Committee and its Board of Directors.

5. The Lawyers' Committee for Civil Rights Under Law maintains its national office in Washington, D.C. and since 1965 has operated an office in Jackson, Mississippi. The Jackson office legal staff has over the years provided legal assistance to thousands of black citizens in that state who suffered injury caused by racial discrimination.

6. The principal work of the Lawyers' Committee is the legal representation of individuals and classes of individuals in lawsuits challenging discrimination in a wide variety of substantive areas, including equalization of municipal services, voting, employment, housing, educational opportunities, judicial proceedings, and the distribution of benefits. Nearly without exception, the Lawyers' Committee repre-

sents only individuals who are financially or otherwise unable to secure counsel to press their claims. The activities of the Committee have resulted in very substantial, measurable, tangible benefits to individuals and communities. A few examples are:

—The Lawyers' Committee litigated—and won—a dozen cases challenging inequalities in the provision of standard municipal services and facilities (such as water, sewers, drainage, street and sidewalk paving, fire protection, and recreational facilities) to predominantly minority neighborhoods in Mississipi, Michigan and Florida. As a result of court orders or consent decrees in those cases, literally millions of dollars have been expended to improve the quality of life and eliminate substandard conditions which minority citizens were forced to endure.

—The Committee's fair employment litigation has resulted in the recovery of large amounts of back pay by individuals to compensate them for the unlawful discrimination which they suffered. A class of 300 women employees of the Bindery Division, Government Printing Office, will receive back pay estimated to total $12 million in *Thompson* v. *Sawyer*. A settlement of *Scott* v. *International Paper Company* provides $412,000 in back pay to a class of 208 present and former black employees of the firm's paper mill in Natchez, Mississipi. Stewardesses forced to take early maternity leaves benefited from a $1.2 million back pay fund in *MacLennan* v. *American Airlines*. These are but a few examples. Scores of individuals have also obtained employment, reinstatement or promotion in employment discrimination suits handled by the Lawyers' Committee.

—Since 1975 the Lawyers' Committee has operated a Federal Education Project which has worked closely with parent and local community groups throughout the country to assist them in making the federally funded school programs in their local districts more effective. The Project has conducted training workshops for thousands of parents in locations across the nation; it publishes a monthly Newsletter available without charge to parents which has a current circulation in ex-

cess of 8,000. Through the Washington, D.C. Committee, legal counsel is provided directly to parent councils at twelve individual District of Columbia public schools in the Anacostia area; this assistance has enabled the parents' organizations to secure improvements in such areas as school security, instructional supplies, etc.

—The Committee has been involved in major litigation affecting education, from school finance reform cases in 28 states which seek to guarantee an equal educational opportunity to children residing in low-property-wealth school districts, to school desegregation cases in Montgomery County and Prince George's County, Maryland, to litigation which ended discriminatory pupil testing, grouping and promotion practices in rural Greensville County, Virginia.

—The Committee has also been heavily involved in voting rights litigation to ensure that black and other minority citizens may register to vote, cast ballots, and have their votes counted without discrimination. Particularly in Mississippi, the Committee has long toiled in the courts to obtain fair apportionment plans which do not dilute the voting strength of the State's black citizens.

7. As the preceding description, albeit incomplete, demonstrates, the work of the Lawyers' Committee provides services and benefits directly to the clients whom we represent in litigation. Although our activities focus on the elimination of invidious discrimination because of race, national origin, or sex, we represent real parties who have real legal claims in our litigation, and we do not bring abstract or hypothetical cases to advance any theory or policy. Our voting rights cases do not seek to vindicate any partisan political cause but rather to enforce statutory and constitutional rights regardless of partisan political affiliation.

8. The Lawyers' Committee for Civil Rights Under Law is not a political action or advocacy organization within the meaning of the Internal Revenue Code. The Committee engages in a minimal amount of legislative activity as explicitly authorized by the Internal Revenue Code and the Tax Reform Act of 1976; that activity is concerned solely and

entirely with statutes or proposed statutes that affect the remedies available to the classes of individuals whom we represent in lawsuits, *i.e.*, the disadvantaged and those suffering from discrimination based on race, national origin or sex.

9. The Lawyers' Committee was first admitted to the Combined Federal Campaign in 1982 as a National Service Agency and applied to participate in some 70 local campaigns around the country. (The number of applications submitted to local CFCs was limited because the Lawyers' Committee had a period of only two weeks within which to submit such requests for participation.) We have not yet been informed whether or not the Committee was admitted to all of these campaigns and to date we have received very little information concerning funds raised for the Committee in the 1982 CFC. However, initial reports from the Combined Federal Campaign for the National Capital Area indicate that the Lawyers' Committee was designated to receive nearly $20,000 in contributions in that local campaign alone. Although that sum, considered alone, does not constitute a substantial proportion of the Committee's annual operating budget (which approximates $2 million), it is highly significant because unlike most foundation support received by the Lawyers' Committee, CFC contributions are unrestricted funds which may be applied to meet needs as they arise for the clients of the Committee.

/s/ William L. Robinson
WILLIAM L. ROBINSON

Sworn to and subscribed:
before me this 29th day
of March, 1983.

/s/ Valerie Prather
VALERIE PRATHER
Notary Public
My Commission expires on: March 31, 1984

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action NO. 83-

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., ET AL., PLAINTIFF,

v.

HON. DONAL DEVINE, DIRECTOR, UNITED STATES OFFICE OF PERSONNEL MANAGEMENT, DEFENDANT.

AFFIDAVIT OF EARL M. BLAUNER

I, Earl M. Blauner, being first duly sworn, state as follows:

1. I reside at 1177 Green Street, San Francisco, California, 94109.

2. I am an attorney and work for Sierra Club Legal Defense Fund, Inc. (SCLDF), 2044 Fillmore Street, San Francisco, California, 94115. My responsibilities include management of Sierra Club Legal Defense Fund's participation in the Combined Federal Campaign, and I am personally familiar with the details of that participation.

3. Sierra Club Legal Defense Fund is a nonprofit corporation dedicated to the use of existing legal remedies to protect the natural and human environment of the United States. It provides legal and information and referral services to individuals and organizations throughout the nation.

4. Sierra Club Legal Defense Fund's application for participation as a National Service Agency in the 1982/83 Combined Federal Campaign was approved by the United States Office of Personnel Management (OPM) on July 23, 1982. SCLDF subsequently applied to approximately 560 local campaigns throughout the country and was accepted in at least 256 of them, either immediately upon application or after appeal to OPM. 200 of the local campaigns have not notified SCLDF of their eligibility decision. Based on preliminary returns from some of the nonreporting local campaigns, it appears that at least the majority of them did

find SCLDF eligible to participate. The number of local campaigns SCLDF participated in, therefore, is substantially larger than 256 and may be as high as 360.

5. Preliminary returns from local campaigns show that substantial numbers of Federal employees throughout the country are supporting SCLDF with contributions through the Combined Federal Campaign.

6. With partial reports of pledges available from only 25 of the more than 256 local campaigns SCLDF is participating in pledges of $113,222.00 to SCLDF have been reported.

7. A partial list of pledges reported is as follows:

Washington, D.C.	$52,761
San Francisco, California	13,626
San Diego, California	11,058
Honolulu, Hawaii	7,152
Chicago, Illinois	7,117
Los Angeles, California	5,810
Denver, Colorado	4,853
Dayton, Ohio	1,988
New York, New York	1,862
Bakersfield, California	672
Austin, Texas	596
Cincinnati, Ohio	549
Newark, New Jersey	516
El Paso, Texas	382
Key West, Florida	380
Colorado Springs, Colorado	155
Frederick, Maryland	134
Minneapolis-St. Paul, Min.	130

8. Totals less than $100 were pledged by Federal employees in Winchester and Quantico, Virginia, Pensacola, Florida, Tacoma and Walla Walla, Washington, Crane, Indiana, Champaign, Illinois, and Batavia, New York.

9. It is my estimate, based on these preliminary returns, that Sierra Club Legal Defense Fund should receive contributions from the 1982/83 Combined Federal Campaign of at least $140,000 and that the sum may reach $230,000 or more.

10. $140,000 to $230,000 represents from seven percent to twelve percent of SCLDF's current annual budget. This money will enable SCLDF to provide additional legal services to its clients to assist them in their efforts regarding air and water quality, toxic chemicals, public lands preservation, wildlife and other environmental concerns.

11. Over the last ten years, on behalf and at the request of its clients, the Sierra Club Legal Defense Fund has brought numerous actions to enforce laws that protect the public health and welfare by regulating air pollution, water pollution and toxic wastes. SCLDF has been involved for over a decade in establishing and enforcing laws relating to prevention of significant deterioration of air quality. In the past several years, SCLDF attorneys initiated court actions regarding the setting of ozone standards and new source performance standards for coal-burning power plants. Staff are presently involved in a legal challenge relating to the regulation of tall stacks used by the utility industry and others as a means of avoiding pollution control of harmful sulfur dioxide emissions. The elimination of toxic chemicals from water supplies has been the goal in legal actions in Massachusetts, Pennsylvania, and Alabama, and indiscriminate use of herbicides and other toxic chemicals has been opposed in the states of Arkansas, California, and South Dakota, among others. The results of these and other SCLDF actions have a direct effect on the health of SCLDF's individual clients, the members of its organizational clients, and the public at large.

Dated: March 29, 1983

/s/ Earl M. Blauner
EARL M. BLAUNER

State of California
County of San Francisco

On March 29, 1983, before me, the undersigned, a Notary Public, in and for said State, personally appeared Earl M. Blauner, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

/s/ Diana C. Laczkowski
Notary Public

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.,
PLAINTIFF,

v.

HON. DONALD J. DEVINE, DIRECTOR UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT DEFENDANT.

AFFIDAVIT OF JONATHAN LASH

1. I am Jonathan Lash. I am a staff attorney with the Natural Resources Defense Council's Washington, D.C. office.

2. Plaintiff NRDC, a body corporate under the laws of the State of New York, was formed in 1969 as a nonprofit tax-exempt organization dedicated to the wise management of natural resources, enhancement of environmental quality, and reduction of health risks from pollution. In 1970, NRDC was determined by the Internal Revenue Service to be an organization described in section 501(c)(3) of the Internal Revenue Code and it has retained its tax-exempt status under that section since that date. NRDC has offices in New York, Washington, D.C., San Francisco, California, Natick, Massachusetts, and Denver, Colorado. It conducts its various activities through a salaried staff of more than 40 lawyers, scientists and other professionals.

3. NRDC engages in a broad program of natural resources and environmental protection activities. These include research and publication of information, public education programs, and participation in litigation and agency proceedings affecting environment and natural resources issues. The areas in which NRDC is currently active include air and water pollution, toxic substances control, drinking water safety, protection of natural areas, forestry, coastal zone and public lands management, and energy.

4. NRDC has participated in several hundred lawsuits in the federal and state courts of the United States, a similar

number of administrative proceedings, and public education and negotiations with industry. Many of these actions have resulted in more effective implementation of laws designed to protect the health and welfare of United States citizens and the natural resources of the nation. They have benefitted the health and welfare of individuals directly affected by the environmental practices at issue: For example: An NRDC suit brought with a group of community organizations in Tennessee resulted in a 50 percent reduction of sulfur dioxide emissions by TVA's power plants; NRDC conducted training workshops for citizens in local communities in many states to train them to participate in evaluation of surface water discharge permits resulting in improved compliance with standards—and safer water and fish—in their communities; NRDC has worked with local utilities to establish a zero-interest loan program for home weatherization; NRDC helped negotiate plans for clean ups of specific rivers polluted by industrial discharges; NRDC has successfully led the national campaign to reduce lead pollution from gasoline, which has the greatest health impact on urban children. In addition, NRDC's specific efforts have established administrative and legal precedents, practices, and requirements applied generally, with resulting direct benefits to the health and welfare of individuals in other areas.

5. The bulk of NRDC's effort is directed at effective implementation of environmental laws and regulations already in effect and reflecting established public policy. Only a small part of NRDC's effort is directed at affecting legislative decisions, and all such efforts are conducted within the applicable tax law rules, 26 U.S.C. § 501(c)(3) and (h), governing such activity by charitable organizations.

6. NRDC depends heavily on contributions from the public. In the past two years, NRDC received contributions from 40,000 individuals, in all 50 states and the District of Columbia.

7. NRDC has participated in the 1981 and 1982 CFC campaigns. In 1981, it participated in 19 local campaigns and has so far received contributions of $42,000. In 1982, it participated in 90 local campaigns. Funds from the 1982

campaign have not yet been tabulated or distributed to it. NRDC reasonably expects that if it is able to participate in more local campaigns and appeal on a continuing basis to federal workers, CFC will continue to be a significant source of support and a medium for conveying our message to a significant audience, namely federal civilian and military employees.

8. If NRDC was excluded from future Combined Federal Campaigns, it will be extremely difficult for us to reach the federal employee audience, and because of the costs of direct mail, a much greater proportion of revenue will have to go to fund raising activities, with the result that a smaller proportion of the organization's resources will be used for its program. The net result will be that federal employees and other individuals will receive fewer benefits from NRDC than if we were permitted to continue our participation in the Combined Federal Campaign.

/s/ Jonathan Lash

JONATHAN LASH

Sworn to and subscribed before
me this 29th day of March, 1983.

/s/ Dona Marie Wilcox

Notary Public

My commission expires: July 31, 1987

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., ET AL., PLAINTIFFS,

v.

HON. DONALD J. DEVINE, DIRECTOR, UNITED STATES OFFICE OF PERSONNEL MANAGEMENT, DEFENDANT.

MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs, by their undersigned counsel, move the Court for a preliminary injunction *pendente lite* for the purpose of maintaining the status quo, and requiring the defendants to process their pending applications for continued participation in the Combined Federal Campaign under the existing regulations insofar as they relate to eligibility as national service agencies. In support of this Motion plaintiffs would show the following:

1. Incorporated by reference as if fully set out herein is plaintiffs' Statement of Material Facts As to Which Plaintiff Contends There is No Material Issue.

2. Defendants have announced that new regulations pursuant to the revised Executive Order 12404 will be published for comment in April, 1983, with the intent of receiving applications sometime in May of 1983.

3. In 1982 new regulations were not published until July and applications not received and processed until late July. Similarly, in 1980 when plaintiffs were last denied participation in the Combined Federal Campaign, their applications were not finally decided upon until June. (See the affidavit of Charles Stephen Ralston.) By the time plaintiffs were able to come to court the result was that it was too late to obtain relief which would have allowed them to participate in that fall's Combined Federal Campaign. (See the order of the Court in *NAACP Legal Defense and Educational Fund, Inc.* v. *Campbell*, 504 F. Supp. 1365, 1369 (D.D.C. 1981).

4. Defendants have announced their intention to promulgate regulations which would result in the exclusion of the plaintiffs from further participation in the Combined Federal Campaign. (See affidavit of Phyllis McClure, and Exhibit A.) At the present time plaintiffs are entitled to participate and have filed applications under the existing regulation to continue their participation.

5. If plantiffs' applications are denied in May or June of 1983 the chances are great that by the time full court review is had they will not be able to complete the application process to local combined federal campaigns in time for inclusion in the fund-raising brochures for the Fall 1983 CFC. (See affidavit of Charles Stephen Ralston.) The result would be that plaintiffs would irretrievably lose the right to exercise their First Amendment rights of charitable solicitation for one year, and would irretrievably lose contributions from federal employees, which is expected to be in excess of $300,000. (See affidavit of Emanuel Owens).

6. Plaintiffs' continued inclusion in the Combined Federal Campaign pending the ultimate decision of their First Amendment rights would in no way interfere with the continued operation of the Combined Federal Campaign or injure the public or any other organization. Plaintiffs have participated in the Combined Federal Campaign for the last two years with no disruption of the campaign whatsoever. Further, large numbers of federal employees have exercised their right to contribute to the plaintiffs through the payroll deduction or direct contribution methods and they would be denied this right if plaintiffs were excluded this fall. (See affidavit of Emanuel Owens; Valerie V. Ambler) Defendants would suffer no inconvenience by simply having to continue to include the plaintiffs in the CFC. (See affidavit of Charles Stephen Ralston.) Thus, the effect of the relief sought herein would simply be to preserve the status quo pending the final resolution of plaintiffs' claims.

Plaintiffs request a hearing on this motion.

Respectfully submitted,
JACK GREENBERG
JAMES M. NABRIT, III
CHARLES STEPHEN RALSTON
LOWELL JOHNSTON
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(212) 586-8397

/s/ Elaine Jones (CSR)

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JACK JOHN OLIVERO
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/s/ Norman J. Chachkin (CSR)

WILLIAM L. ROBINSON
NORMAN J. CHACHKIN
Lawyers' Committee for Civil
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., ET AL., PLAINTIFFS

v.

HON. DONALD J. DEVINE, DIRECTOR, UNITED STATES OFFICE OF PERSONNEL MANAGEMENT, DEFENDANT

MOTION FOR SUMMARY JUDGMENT

Plaintiffs, by their undersigned counsel, move the Court for Summary Judgment in their favor. The grounds for this Motion are set out in the affidavits filed with the Complaint, plaintiffs' Statement of Material Facts Not in Dispute, and their Memorandum of Points and Authorities filed herewith. They demonstrate that there are no material issues of fact to be resolved and that plaintiffs are entitled to judgment as a matter of law.

WHEREFORE, plaintiffs pray that they be granted summary judgment:

1. Declaring that the acts of defendant complained of herein violate plaintiffs' rights under the First and Fifth Amendments to the Constitution of the United States;

2. Declaring that the acts of defendant complained of herein are arbitrary, capricious, contrary to law, and that defendant has violated a duty owed to plaintiffs by so acting;

3. Enjoining defendant, his employees, agents, and successors in office, from refusing to approve plaintiffs as participating organizations in the Combined Federal Campaign;

4. Awarding plaintiffs their costs and reasonable attorneys' fees incurred here.

Respectfully submitted,

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action NO. 83-

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., ET AL., PLAINTIFFS

v.

HON. DONALD J. DEVINE, DIRECTOR, UNITED STATES OFFICE OF PERSONNEL MANAGEMENT, DEFENDANT

STATEMENT OF MATERIAL FACTS AS TO WHICH PLAINTIFF CONTENDS THERE IS NO MATERIAL ISSUE

1. On January 19, 1981 this Court issued a memorandum opinion and order ordering that the defendant not deny pending or future applications of plaintiffs to participate in the Combined Federal Campaign on the basis of the "direct services" rule set out in the governing Manual for Fund Raising in the Federal Service. (504 F. Supp. 1365 (D.D.C. 1981).) As a result of that order plaintiffs were admitted to the Combined Federal Campaign for the campaigns held in 1981 and 1982. (Affidavit of Charles Stephen Ralston.) As set out more fully below plaintiffs received contributions from federal employees from their participations in those years. (Affidavits of Emanuel Owens; Robert L. Becker.)

2. In 1981 the defendant announced its intention eventually to amend or modify the existing manual provisions to limit the organizations allowed to participate in the Combined Federal Campaign in an attempt to comply with this Court's order. (Affidavit of Charles Stephen Ralston, Ex. B.) However, in 1982 the defendant revised the existing manual by issuing a superseding set of regulations which by their terms continued to permit the participation of the plaintiffs and other legal defense fund-type organizations. (29 C.F.R. Part 950.)

3. On February 10, 1983 defendant announced the promulgation of Executive Order 12404 which re-enacts a "direct services" rule. 48 F.R. 6685 (Feb. 15, 1983). The an-

nounced purpose of the "direct services" rule was to permit the exclusion of legal defense funds, including the plaintiffs, in an attempt to comply with the requirements of this Court's order. (Affidavit of Phyllis McClure, Ex. A.) The new executive order, a copy of which is attached to the complaint filed herein, again requires that participation in the Combined Federal Campaign shall be limited to organizations which provide direct services in the areas of health and welfare, and attempts to define these terms by, *inter alia* excluding so-called "political" organizations that seek to "influence ... the determination of public policy" through the bringing of litigation on behalf of "parties other than themselves."

4. The new executive order was announced at a press conference held by the Office of Personnel (OPM) at which the General Counsel of OPM issued a press release, a copy of which is attached to the accompanying affidavit of Phyllis McClure. (Ex. A.) In the press release and at the press conference it was specifically announced that legal defense funds that litigate for "causes" or for the purpose of "influencing public policy" would be excluded, while legal aid societies which provided legal services to all persons based on a need requirement would be included. At the press conference it was also stated that the NAACP Special Contribution Fund would be allowed to participate in the Combined Federal Campaign, while legal defense funds would not be allowed to participate. (Affidavit of Phyllis McClure; Ex. A.) It was further made clear that the purpose of the executive order was to attempt to overcome the vagueness found by this Court in the "direct services" rule of the earlier regulations. (Id.). This purpose was also explicitly stated in the memorandum sent by defendant to the White House on February 2, 1983, which explains the purpose of the new Executive Order (Affidavit of Charles Stephen Ralston, Ex. K.) The memorandum states that the new executive order will permit the exclusion of legal defense funds, and refers to the NAACP Legal Defense and Educational Fund by name. (*Id.*, Ex. K, pp. 3, 4.) However, it is also clear that the result sought to be achieved, i.e., the inclusion of legal aid societies and the NAACP

Special Contribution Fund while excluding so-called legal defense funds, was precisely the same as the result sought to achieved by the version of the direct service rule struck down in 1981. (Affidavit of Phyllis McClure, Ex. A).

5. It was also made clear at the press conference and in the materials attached to the press release, that the immediate genesis of the new executive order as was the supposed "controversial" nature of legal defense fund-type organizations. (Id.; Affidavit of Charles Stephen Ralston, Ex. F-H, K) Thus, in 1982 there was admitted into the Combined Federal Campaign a number of legal defense funds, including the National Right to Work Legal Foundation. Because of the positions and litigation brought by this particular foundation a number of labor unions and the AFL-CIO itself expressed concern and opposition to the inclusion of the organization in the Combined Federal Campaign. (Affidavit of Charles Stephen Ralston, Ex. F-G.) Although some unions called for a boycott of the Combined Federal Campaign the AFL-CIO urged that federal employees designate other organizations to receive their moneys so that no contributions would be given to the National Right to Work Foundation. (*Id.*, Ex. G.) This encouragement of designations was fully consistent with the regulations issued by the Office of Personnel Management which also encouraged federal employees to specify the particular organization to which their money should go. (5 C.F.R. §950.513.)

6. Following these events, in the early autumn of 1982 the executive board of the United Way of America passed a resolution urging the President to modify the executive order because of the alleged "controversy" that had arisen. (Affidavit of Charles Stephen Ralston, Ex. H.)

7. Despite the claims that the Combined Federal Campaign would be injured because of the alleged controversal nature of the legal defense fund, in fact, according to the Director of OPM, Dr. Donald Devine, and other OPM officials, contributions to the Combined Federal Campaign were up by 7% over the preceding years' receipts. (Affidavits of Charles Stephen Ralston; Phyllis McClure.) In fact, some local campaigns experienced substantial increases in receipts even though a fewer number of federal employees

were contributing. (Affidavit of Charles Stephen Ralston, Ex. I.). Indeed, the plaintiffs' experience has been that, based on initial limited information, giving to them increased substantially in 1982 over their first year's participation in the Combined Federal Campaign. (Affidavit of Emanuel Owens) In general, the organizations newly admitted will receive up to $4 million in contributions out of a total of over $100 million donated. Thus, it is clear that many federal employees, numbering in the tens of thousands, wish to and have exercised their First Amendment right to contribute their money through the payroll deduction method to the plaintiffs and similar organizations which will now be excluded from the campaign. (*Id.*) Preliminary reports from the Capital Area CFC for the 1982 campaign which covers the Washington, D.C. area, show that all legal defense funds had been pledged approximately $350,000 as of March 2, 1983. (Affidavit of Charles Stephen Ralston, Ex. J.)

8. For example, plaintiff, NAACP Legal Defense and Educational Fund, Inc., has received nearly $200,000 to date from the Combined Federal Campaign beginning in the fall of 1981. (*Id.*) Based on pledged amounts and projections, it will receive approximately $300,000 from the 1981 campaign and in the neighborhood of $340,000 from the 1982 campaign. (*Id.*) Other legal defense fund type organizations have received substantial contributions as well. (Affidavits of Valerie V. Ambler; Charles Stephen Ralston, Ex. J.) Thus, it is clear that, despite the claims of an alleged controvery, large numbers of federal employees wish to contribute to the plaintiffs and have exercised their right to do so. (*Id.*) If plaintiffs are cut off from this source of income, their programs will suffer and they will necessarily have to cut back their expenditures in furtherance of their activities which themselves are protected by the First Amendment to the Constitution of the United States. The impact on plaintiff FEW/LEF would be particularly severe. The organization's program is specifically directed towards the interest of federal employees. Through the CFC FEW/LEF has been able to raise sufficient funds to develop a full program. (Affidavit of Valerie V. Ambler.)

9. In the executive order itself and in the press release and statements issued at the time of the executive order's adoption it is clear that defendant has attempted to circumvent the earlier decision of the court by incorporating into the Executive Order and its interpretation the very rules which the court found inadequate to justify the barring of plaintiffs in 1981. (E.O. 12404; Affidavit of Phyllis McClure, Ex. A.)

10. Thus, defendant has again attempted to draw a distinction between legal aid societies and legal defense funds based on an understanding that legal aid societies accept all persons based on an income test regardless of the nature of their legal problems, while organizations such as plaintiffs only bring cases which are politically oriented and which have for their purpose affecting public policy. (*Id.*) This was specifically the rationale stated by the defendants in their letter of rejection of plaintiffs in 1980, cited by the court in its opinion of January, 1981. (504 F. Supp. at 1366)

11. Further, the defendants have announced that the Special contribution Fund of the NAACP will be admitted to the Combined Federal Campaign. (Affidavit of Phyllis McClure.) As held in the earlier decision of the Court the Special Contribution Fund conducts the same type of litigation activities as do the plaintiffs. (504 F. Supp. 1366-68; Affidavit of Jack Greenberg, Ex. L). The basis for the distinction in 1981 was that the Special Contribution Fund used a smaller proportion of its funds for litigation activities as compared to the plaintiffs. The court found that such an alleged rule was arbitrary and suffered from the same deficiency as that found by the Supreme Court of the United States in *Village of Schaumburg* v. *Citizens for A Better Environment*, 444 U.S. 620 (1979). (504 F. Supp. at 1368).

12. Finally, the proposed executive order attempts to distinguish between so-called advocacy agencies and organizations that do not engage in political activities. (see, Affidavit of Charles Stephen Ralston, Ex. K.) However, the plaintiffs are not advocacy organizations within the meaning of the Internal Revenue Code. (Affidavits of Jack Greenberg; Robert L. Becker; Valerie V. Ambler; Robert

T. Coulter; William L. Robinson) Rather, they have been recognized, for as long a period as 42 years in the case of the NAACP/LDF, by the Internal Revenue Service as providing valid, charitable activities within the meaning of Section 501(c)(3) of the code. (Affidavit of Jack Greenberg, Ex. L.; Affidavit of Robert L. Becker; Valerie V. Ambler; Robert T. Coulter; William L. Robinson.) Thus, as was held in 1981, such organizations conduct litigation on behalf of individual plaintiffs representing themselves and classes of persons, which litigation results in direct and immediate benefits in employment, health care, education and other areas being conferred on thousands of individuals, and provide other "direct services." (504 F. Supp. at 1368; affidavits of Jack Greenberg; Robert L. Becker, Valerie V. Ambler; Robert T. Coultier; William L. Robinson.)

13. Immediate relief is required to prevent the plaintiffs from suffering irrevocable harm in two respects. First, if they are again barred from the Combined Federal Campaign and are unable to obtain judicial relief in time for inclusion in the 1983 campaign, they will never be able to recoup the loss of revenues thereby suffered. (See, 504 F. Supp. at 1369.) Second, if they are barred they will irrevocably lose their right to exercise their First Amendment rights in the up-coming fall 1983 campaign.

14. The issuance of relief now will serve to preserve the status quo. The plaintiffs have participated in the last two Combined Federal Campaigns and are fully eligible to do so under the existing regulations. The new executive order provides that the existing regulations will remain in full force and effect until new regulations are promulgated. (E.O. 12404, § 2.) By requiring the defendant to process plaintiffs' present applications to remain in the Combined Federal Campaign the Court will, in fact, be simply preserving the status quo *pendente lite*.

15. The defendant, on the other hand, will suffer no injury whatsoever by being required to continue the Combined Federal Campaign as it has been conducted in the past two years. As set out above, there is no factual basis for any claim that the Combined Federal Campaign has suffered any damage or injury because of the plaintiffs' participation in the Combined Federal Campaign. Claims that the inclusion of allegedly "controversial" organizations would

result in lower giving, have proven to be speculative and unfounded. (Affidavits of Charles Stephen Ralston; Emanuel Owens; Valerie V. Ambler.)

Plaintiffs request a hearing on this motion.

Respectfully submitted,

JACK GREENBERG
JAMES M. NABRIT, III
CHARLES STEPHEN RALSTON
LOWELL JOHNSTON
10 Columbus Circle
Suite 2030
New York, N.Y. 10019
(212) 586-8397

/s/ Elaine R. Jones (CSR)

ELAINE JONES
BARRY L. GOLDSTEIN
BRENT SIMMONS
806 15th Street, N.W.
Suite 940
Washington, D.C. 20005
(202) 638-3278

JACK JOHN OLIVERO
ROBERT L. BECKER
Puerto Rican Legal Defense and Educational Fund, Inc.
95 Madison Avenue
New York, N.Y. 10157
(212) 532-8470

/s/ Norman J. Chachkin (CSR)

WILLIAM L. ROBINSON
NORMAN J. CHACHKIN
Lawyers' Committee for Civil Rights Under Law
733 15th Street, N.W.
Washington, D.C. 20005
(202) 628-6700

STUART J. LAND
Arnold & Porter
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 872-6700

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-0928

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., ET AL., PLAINTIFFS,

v.

DONALD J. DEVINE, DIRECTOR, UNITED STATES OFFICE OF PERSONNEL MANAGEMENT, DEFENDANT

DEFENDANT'S MOTION TO DISMISS

Pursuant to Rule 12 of the Federal Rules of Civil Procedure, defendant respectfully moves this Court to dismiss this action for lack of subject matter jurisdiction as premature. As of this time, prior to the promulgation of implementing regulations and prior to any decisions on applications by organizations, including plaintiffs, for admission to the 1983 Combined Federal Campaign, there is no live, ripe case or controversy between plaintiffs and defendant and this action must be dismissed. A proposed order is submitted herewith in accordance with Local Rule 1-9.

Respectfully submitted,

/s/ Stanley S. Harris
STANLEY S. HARRIS
United States Attorney

/s/ Royce C. Lamberth
ROYCE C. LAMBERTH
Assistant United States Attorney

/s/ John D. Bates
JOHN D. BATES
Assistant United States Attorney

ATTACHMENT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-0928

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., ET AL., PLAINTIFFS,

v.

HONORABLE DONALD J. DEVINE, DIRECTOR, UNITED STATES OFFICE OF PERSONNEL MANAGEMENT, DEFENDANT

AFFIDAVIT

P. Kent Bailey, being duly sworn, deposes and says:

1. I am the program analyst providing staff support to the Assistant to the Deputy Director for Regional Operations, United States Office of Personnel Management (OPM). The Office of the Assistant to the Deputy Director is the OPM office with primary responsibility for support to the Director of OPM in the administration of the Combined Federal Campaign (CFC). The statements made herein are based upon personal knowledge obtained in the course of performing the official duties assigned to me.

2. My office has periodically categorized and kept account of correspondence received on CFC issues. In addition, my office is the repository for the applications of organizations seeking to participate in the CFC as national voluntary agencies.

3. During and after the fall 1982 CFC, OPM received hundreds of letters from Federal employees, Federal agency heads, Chairmen of Federal Executive Boards, Chairmen of local Federal Coordinating Committees (organizations that administer local CFCs), members of Congress, unions, private voluntary organizations, and others concerning the inclusion of what most termed "political," "advocacy" or "non-traditional" voluntary organizations in

the fall 1982 CFC, or other matters concerning the operation of the CFC.

4. Of the letters we received, more than 80 percent asked that the CFC be restricted to "non-political," "non-advocacy" or "traditional" voluntary charitable organizations. Three percent requested that there be no restrictions. Thirty-four percent predicted that there would be a drop in CFC contributions and 18 percent stated a likelihood of CFC boycotts if participation in the fall 1983 CFC were not so restricted. (See, Exhibits 1-9, attached hereto, for samples of this correspondence.)

5. As of this date, OPM has received applications for the fall 1983 CFC from the Puerto Rican Legal Defense and Education Fund, Inc.; the NAACP Legal Defense and Educational Fund, Inc.; the Federally Employed Women Legal and Education Fund, Inc.; and the Indian Law Resource Center. OPM has not received applications for the fall 1983 CFC from the Lawyers' Committee for Civil Rights Under Law; the Sierra Club Legal Defense Fund, Inc.; or the Natural Resources Defense Council, Inc.

/s/ P. Kent Bailey
P. KENT BAILEY

Sworn to and subscribed before me this 8th day of April, 1983, in the City of Washington, District of Columbia.

/s/ Helen B. Welch
HELEN B. WELCH
Notary Public
My commission expires: 3/31/87

This year I have decided to forego contributing to CFC. I understand you want an explanation.

I have been a regular contributor since the days of the Community Chest. When the flap came over Planned Parenthood, I began to realize my contributions had become a mechanical action and that I had not asked how the program had expanded, which agencies were involved, how the money actually was distributed, or what the overhead costs were. After looking into these things I came to believe that this fundraising scheme has outlived its usefulness.

The total number of agencies is incredible. And the types! As an example, in no way in this world would I want to be included in any activity sponsoring "Conservative Legal Defense and Education Fund" or "National Right to Life Educational Foundation." However, I also can see no reason for organizations like "The Wilderness Society" or "Sierra Club Legal Defense Fund", which are dear to my heart, to be included in such a campaign. There are many worthy organizations on your list—and many more that could use some money that are not included. If I remember correctly, the initial idea for this fund raising included a few local charities and was to have one combined campaign for these so that we would not have repeated requests for money. I see many on your list that hit me up regularly. I think the time is past due to forget a combined fund, and contribute to those charities I specially choose.

So my decision is that I will split this usual $75 contribution between Planned Parenthood and the Salvation Army, and donate it directly and locally.

[Name blacked out]

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 375TH AIR BASE GROUP (MAC)
SCOTT AIR FORCE BASE, ILLINOIS 62225

7 February 1983

Received February 16, 1983
Office of the Director

Dr. Donald J. Devine, Director
Office of Personnel Management
Washington, D.C. 20415

Dear Dr. Devine

Mr. Clarance Squellati, Chairman of the 1982 East-West Gateway Campaign, wrote me concerning a January 6, 1983 CFC meeting held in Washington. He indicated that the future direction of the CFC was discussed at that meeting. I feel strongly that the CFC should only support health and welfare agencies.

The CFC drive at Scott Air Force Base met with considerable resistance this year because advocacy groups and agencies would be receiving campaign monies. All of us here at Scott believe these groups deserve citizen support but not through the CFC.

The Scott CFC campaign was an outstanding success in 1982 only because our project officers worked so industriously and diligently. I feel the present policy of allowing advocacy groups in the system will cause a decline in the support of the CFC. Please place special emphasis on retaining only health and welfare agencies in the CFC directory. By doing this, the CFC will remain vital and successful.

Sincerely

/s/ Gary K. Spencer
GARY K. SPENCER,
Colonel, USAF Commander

INTERNAL REVENUE SERVICE
DEPARTMENT OF THE TREASURY
P.O. BOX 1548, ST. LOUIS, MO. 63188

Received Feb. 23, 1983
Office of the Director

Dr. Donald J. Devine, Director
Office of Personnel Management
Washington, DC 20415

Dear Dr. Devine:

Each year, employees of the St. Louis District of the Internal Revenue Service are encouraged through the Combined Federal Campaign to designate their contribution to the agency of their choice to help preserve the essential levels of service offered by human care agencies.

The importance of affording agencies the opportunity to provide services for the needy and funds for research cannot be stressed enough. Unfortunately, many people withhold contributions, protesting the inclusion of advocacy agencies in CFC. We feel the present concept of allowing these agencies in the system will most certainly cause an ultimate decline of CFC as we know it. Several agencies have been forced to shut down due to a cutback in federal funding, and without the support offered by the CFC, others will soon follow.

The St. Louis District of the Internal Revenue Service does not encourage support of advocacy groups. Our campaign reinforces the need to recognize the vital human service agencies and to continue voluntary support to them.

Our position is that the true direction of the Federal Campaign is away from advocacy groups and toward health and welfare agencies. We therefore encourage a reevaluation of the criteria used for including organizations in CFC.

Sincerely yours,

/s/ Robert A. LeBaube
ROBERT A. LEBAUBE
District Director

UNITED STATES POSTAL SERVICE
OFFICE OF THE POSTMASTER

February 11, 1983

Received Feb. 18, 1983
Office of the Director

Donald J. Devine, Director
U.S. Office of Personnel Management
1900 East Street, NW
Washington, D.C. 20415

Dear Dr. Devine:

The Denver U.S. Postal Service is very much opposed to any of the special emphasis agencies being part of the Combined Federal Campaign. We would strongly recommend that CFC funds be limited to traditional health and welfare groups.

The pledges from Postal Service employees to CFC were not as high this year as last year. This drop is attributed to the fact that a craft union boycotted the Campaign due to the inclusion of a special emphasis organization.

The Denver U.S. Postal Service would recommend that a change be made in the criteria for acceptance of agencies into the Campaign to disallow those agencies that are not health or welfare oriented.

GARY L. PACKER
MSC Manager/Postmaster
Denver, CO 80202

cc: Norm Alverson, Chairman
Denver Federal Executive Board

HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

September 23, 1983

Received Oct. 1, 1982
Office of the Director

Mr. Donald J. Devine, Director
Office of Personnel Management
1900 E Street, NW, Room 5518
Washington, DC 20415

Dear Director Devine:

I want to convey to you my strong opposition to the Right-to-Work Committee being included as a recipient of funds from this year's Combined Federal Campaign.

The history of the C.F.C. has been one of raising funds from various government employees to support charitable services for those in need of such assistance. The inclusion of the Right-to-Work Committee as a recipient has injected politics into an area which the Congress never intended to become a focus for fostering a certain ideological viewpoint. The Right-to-Work Committee has no place in a fundraising campaign of this nature. I honestly feel that a very serious error in judgment has been made, one which needs to be addressed and corrected immediately.

I urgently await your response on this most important issue.

Sincerely,

/s/ Claudine Schneider
CLAUDINE SCHNEIDER, M.C.

CS:ftd

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

October 4, 1982

Received Oct. 5, 1982
Office of the Director

Mr. Donald J. Devine
Director
Office of Personnel Management
1900 E Street, N.W.
Washington, D.C. 20415

Dear. Mr. Devine:

It has come to my attention that you have issued a ruling in connection with President Reagan's Executive Order No. 12353 allowing a number of special interest groups, which are not charitable and do not provide health and welfare services to needy citizens, to participate in the *Combined Federal Campaign*. Among these organizations are such groups as the National Right To Work Legal Defense Foundation.

I strongly urge you, Mr. Devine, to rescind this ruling which would divert money that is desperately needed to provide the basic services of medical care, shelter and adequate nutrition to so many of our citizens who live in need at this time of reduced federal funding of social programs. Organizations such as the National Right To Work Committee, whose purpose is solely to campaign for a change in the current legal status of labor unions and their members, should not be eligible to share in the charitable contributions given by federal workers who believe that their sacrifices are made for the worthy cause of aiding their less fortunate fellow citizens.

It is my feeling that your ruling to allow the Right To Work Legal Defense Foundation and similar groups to participate in the Combined Federal Campaign introduces a new concept into the Campaign which is entirely alien to the philosophy on which the Campaign is based, and I again urge you to reconsider your decision and prohibit such groups from receiving these funds.

I will look forward to hearing from you at the earliest opportunity.

Sincerely,

/s/ Fernand J. St Germain
FERNAND J. ST GERMAIN
Member of Congress

FJStG:dh

East 12806 Saltese Road
Spokane, WA 99216

September 22, 1982

Dr. Donald Devine, Director
Office of Personnel Management
Washington, DC 20415

Sir:

A shocking story recently came to my attention. You have authorized Political Action Groups to participate, as charitable organizations, in the Combined Federal Campaigns.

My first reaction was "UNBELIEVABLE" and—then—when I was convinced that this had happened, I must exclaim—"THIS IS TOTALLY WRONG!!!"

If you will contact the Attorney General, you will find that the Sierra Club Legal Fund and the Natural Resource Defense Council spend huge sums suing federal agencies and trying to block their programs. To confirm this, check with the Secretary of Energy, the Secretary of Interior, the Environmental Protection Agency, the Chief Engineer of the U.S. Corps of Engineers and the Chief Forester of the U.S. Forest Service.

Please tell me how these groups compare with the Boy Scouts, YMCA, Salvation Army, Project Hope, or any National Health Agency as charitable organizations!!

I need not further question your support of the Right to Work Committee's Legal Fund. Union Members across the nation have pointed out the fallacy of your decision to recognize that group as a charitable organization.

I am a retired federal employee. During my active career of 37 years, I spent nearly half of that time, as a Federal Executive, aggressively trying to build strong CFCs. I was proud of our successes. Your decision to allow political action groups into CFC has negated my efforts—with one directive.

Your decision does not appear to be compatible with the President's program to expand volunteerism. You should rescind your directive.

/s/ N. A. Gilchrist
NORMAN A. GILCHRIST

cc: U.S. SENATOR HENRY JACKSON,
SENATE OFFICE BUILDING,
WASHINGTON, DC 20510
U.S. CONGRESSMAN THOMAS FOLEY,
HOUSE OFFICE BUILDING,
WASHINGTON, DC 20515
NATIONAL ASSOCIATION OF RETIRED FEDERAL EMPLOYEES,
1533 NEW HAMPSHIRE AVE. NW, WASHINGTON, DC 20036

ATTACHMENT #1

FEDERAL EMPLOYEES' REACTION TO THE INCLUSION OF ADVOCACY ORGANIZATIONS AND SPECIAL INTEREST GROUPS IN THE 1983 CFC

The negative reaction from Federal employees to the inclusion of advocacy organizations and special interest groups in the Combined Federal Campaign this year has been unprecedented in volume compared to any other issue in the 19 years history of the CFC.

Normally during the fall campaign period the CFC headquarters receives 350 to 500 telephone calls of a complaint nature, covering a wide range of issues, including the distribution of funds, the inclusion of certain organizations, and campaign materials and procedures.

This year the CFC office received approximately 1,800 telephone calls of a complaint nature, with approximately 1,450 expressing dissatisfaction with the inclusion of advocacy and special interest organizations in this year's campaign. The office received very few, if any, calls supporting the inclusion of such organizations.

Some callers stated they were not contributing this year and would not again until the CFC returns to its former status as a supporter of health and welfare service agencies. Other callers were persuaded to make contributions this year upon learning that the legal defense funds had been included because legally there was no option and that organizations belonging to the National Service Agencies federation would receive designations only. Many callers were keyworkers and campaign leaders advising that this issue was the primary cause for lower participation and disappointing campaign results.

In addition to telephone calls, the CFC office received a number of letters from Federal employees expressing dissatisfaction about the inclusion of advocacy and special interest groups. Copies of representative letters are attached.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 10, 1982

The Honorable Drew Lewis
Secretary of Transportation
Department of Transportation
400 7th & D Street, S.W.
Room 10200
Washington, D.C. 20510

Dear Secretary Lewis:

We recently concluded the Federal Election Commission's drive in connection with the 1983 Combined Federal Campaign. While more than 50% of our employees participated in this year's campaign, we did not attain the dollar goal established for us despite the strong efforts of a diligent Campaign Chairman and despite the fact that I also made a number of personal appeals to employees.

The primary reason for our inability to reach this year's goal was the widespread dissatisfaction with what many employees perceived as the interference of the Office of Personnel Management in the process. I am not arguing the merits of these allegations, but merely wish to call to your attention the fact that this perception severely damaged our efforts, even though I and our Campaign Chairman went to great lengths to point out the earmarking possibilities and the fact that no contribution would be made to national service agencies unless they were specifically designated for such agencies.

Commission employees remain deeply committed to the causes represented by this Campaign, but I firmly believe that this charitable effort will continue to suffer unless and until we convince potential contributors that the drive is devoid of political considerations. I note that this is not an expression of any official Commission position, but instead constitutes merely a reflection upon the experience of this year's campaign at the FEC as seen through the eyes of one genuinely concerned over the success of future campaigns.

Sincerely,

/s/ Frank P. Reiche
FRANK P. REICHE
Chairman

FPR:bt

cc: Mr. William Schaeffler
Director
Combined Federal Campaign
2100 M Street, N.W.
Room 12, Lower Level

1983 COMBINED FEDERAL CAMPAIGN

Dear CFC:

Once again I object to the listing of non charitable agencies in this campaign.

I object to all of the *defense* and *educational funds*. Who is it that considers these political action groups a charity? I do not and have reduced my contribution in protest to the lowest possible payroll deduction.

A plague on the dim wits who have allowed those lobbyists to dilute the CFC effort.

Sincerely,

/s/ [Illegible]

703-756-6365

Nov. 12, 1982

To Whom It May Concern:

I object to the plethora of organizations that have been included in the CFC which are not directed to the needy. There are too many such organizations which reflect special interest groups, for example:

The Pacific Legal Foundation

The Conservative Legal Defense and Education Fund

The National Right to Work Legal Defense Foundation.

Instead of contributing to the CFC this year, I will donate selectively to individual organizations.

/s/ [Illegible]

November 29, 1982

Mr. William Schaeffler
Director, Combined Federal Campaign
2100 M Street, N.W.
Lower Lobby, Room 12
Washington, D.C. 20037

Dear Mr. Schaeffler:

Political lobbying groups may serve a useful purpose in our society, but they do not deserve the support of the Combined Federal Campaign (CFC).

The CFC was formed, as it states in the brochure, to identify deserving charitable organizations and to encourage Federal employees to support their work. Charity, as most of us would agree, involves providing food, clothing and shelter to the needy, alleviating the suffering of the sick, and offering basic services to the disadvantaged.

The money collected in the name of charity should not be placed in the hands of political groups, regardless of their orientation. To do this cheapens the good intentions of all who donate a portion of their work to charitable giving.

I therefore protest the inclusion in the CFC of any group whose work does not conform to the ideals of charitable giving.

Sincerely yours,

/s/ Jeff Nolder

JEFF NOLDER

30 Grafton St.
Chevy Chase, MD 20815
November 22, 1982

Combined Federal Campaign
95 M St.
Washington, D.C. 20024

Dear Sirs:

For the six years that I have worked for the Federal government, I have been a staunch supporter of the Combined Federal Campaign.

This year, however, I will not contribute through CFC, and I thought you might like to know why.

The Combined Federal Campaign has been so politicized over the past year by OPM director Donald Devine, that it now represents a weapon to be used in accordance with his views rather than a vehicle for charitable contributions. His strong-arming of the CFC has caused me to loose my trust in it as a reliable, neutral philanthropy. I will, instead, donate my money directly to charities of my own choosing.

If you find that this year's level of contributions does not meet previous years, you might conclude that my feelings are not unique, that other civil servants have withdrawn their support for the same reason.

I am sending a copy of this letter to Mr. Devine.

Sincerely,

/s/ Alice Shabecoff
ALICE SHABECOFF

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

August 13, 1982

Received AUG 16, 1982
Office of the Director

Mr. Donald J. Devine
Director
Office of Personnel Management
1900 E Street, N.W.
Washington, D.C. 20415

Dear Mr. Devine:

I am writing to you about the Combined Federal Campaign and my concern about some of the National Service Agencies included in the program. While I recognize that federal workers have the right to select the charity(ies) to which they want their contribution to go, I don't feel many of these groups are what I consider "charitable" organizations. For instance, the Center for Auto Safety, Federally Employed Women Legal and Education Fund, Conservative Legal Defense and Education Fund, Lawyers' Committee for Civil Rights Under Law, National Audubon Society, National Right to Life Educational Trust Fund, National Right to Work Legal Defense Foundation, Pacific Legal Foundation, Sierra Club Legal Defense Fund, etc., while all are certainly admirable organizations and do provide services to their members, I'm not certain they meet my determination of a charitable organization that provides assistance to the poor, needy and victims of disasters, and I think a lot of federal workers would probably agree with me. Furthermore, many of the groups I have named above have lobbyists on their staffs and it would appear that their charitable work is more along political lines than service to those in need lines.

I know that the Combined Federal Campaign has come under a lot of fire lately, and I certainly don't want to cause any additional problems. But, I would very much appreci-

ate having your rationale on how OPM monitors these questionable groups, at least questionable to me, with regard to what they do with the funds they receive from the CFC. Your comments would be appreciated, and I will look forward to hearing from you at your earliest convenience.

Sincerely,

/s/ G. William Whitehurst
G. WILLIAM WHITEHURST

GWW:DTW

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

November 9, 1982

Received NOV 15, 1982
Office of the Director

Mr. Don Devine, Director
Office of Personnel Management
Washington, D.C. 20415

Dear Mr. Devine:

I am very concerned over the unnecessary controversy over the Combined Federal Campaign program. The admission of politically controversial and noncharitable agencies have hurt the fundraising goals of the 1983 campaign for many local areas, such as the Bremerton-Kitsap County area in the State of Washington.

Unfortunately with the recent changes in eligibility guidelines and admissions, there are many noteworthy agencies, such as the Bremerton-Kitsap County Home Health Services in Bremerton, Washington and the Kitsap County Indian Center in Silverdale, Washington, that have expressed their deep concern over the threat of discontinuing their operations because of the lack of contributions they project from CFC. Many federal workers who want to voluntarily support health and social service agencies, may not contribute to the CFC drive this year. The inclusion of many non-charitable, political agencies in the CFC program are definite disincentives for contributions. This controversy is unfortunate and should never have happened.

At a time when the Administration is encouraging volunteerism at the local level in dealing with our country's problems and reducing government expenses on important social programs, these new, controversial guidelines are having adverse effects, threatening needed contributions to traditional charities.

I join many of my colleagues and friends and urge you to reconsider the admission of these non-charitable organizations in the Combined Federal Campaign program. I look forward to hearing from you. Best regards.

Sincerely,

/s/ Al Swift
AL SWIFT
Member of Congress

AS:ro

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

December 16, 1982

Mr. Don Devine, Director
Office of Personnel Management
1900 E Street, N.E.
Room 5H09
Washington, D.C. 20415

Dear Don:

As chairman of the Federal Coordinating Committee for the Combined Federal Campaign of the National Capitol Area, I would like to express a concern of the committee which has had an adverse effect on this year's campaign.

At the full committee meeting on August 18, 1982, many members reacted negatively to the inclusion of groups in the campaign which they believed did not provide direct health and welfare services, particularly the "Legal Defense Funds." In an effort to start the campaign on schedule,however, the committee voted to include these organizations, and a subcommittee was formed to study these issues. During the campaign it became clear that many potential contributors also objected to the inclusion of these organizations. I have enclosed a resolution adopted by the Executive Committee on behalf of the full committee on December 15, 1982, expressing the committee's concerns and requesting that the campaign only include "voluntary agencies providing direct health and welfare services."

I believe these concerns are valid and must be addressed.

Sincerely,

/s/ Clarence Thomas
CLARENCE THOMAS
Chairman

Enclosure

RESOLUTION

The Federal Coordinating Committee for the Combined Federal Campaign of the National Capitol Area is authorized by Federal regulations (5 CFR Part 950.211) "... to make all decisions within the provisions and policies established in this Part on all aspects of the local campaign, including eligibility and the supervision of the local community campaign and the Principal Combined Fund Organization."

The Federal Coordinating Committee for the National Capitol Area is composed of 34 members from 27 Federal departments and agencies, representing 85 percent of the total Federal workforce in the National Capitol Area, and officials from six labor unions representing Federal employees. Most of our members have been directly involved in the planning and conduct of department and agency campaigns this fall.

Exercising the responsibility we have, and reflecting what we believe to be the overwhelming view of Federal employees,

> *we urgently call for revisions to the Executive Order and derivative regulations concerning the CFC to reestablish the campaign solely for support of voluntary agencies providing direct health and welfare services.*

The inclusion of other types or organizations, such as those involved exclusively in the promotion of and/or advocacy for special groups and/or causes, has seriously undermined the integrity of the CFC in the view of many thousands of Federal employees (see attachment #1). More specifically, it has damaged this year's campaign effort (see attachment #2) and, if not checked, will destroy the effectiveness of future campaigns.

As a group of senior Federal employees and labor union representatives, we have worked diligently to raise funds for all organizations now qualifying under the existing criteria. In the process we have encountered anger and frustration from potential contributors, and widespread disappointment among coordinators and keyworkers unable to meet their goals because of employee resistance to supporting organizations other than those voluntary agencies providing direct health and welfare services. The designation process has proved to be an inadequate means to alleviate contributor resistance. We conclude that immediate revision of criteria for inclusion in the CFC is the only way in which this resistance can be eliminated and the image of the CFC as a charitable cause be restored. Consequently, we strongly recommend the most expeditious action possible to redefine the criteria for organizations to qualify for CFC support. We believe firmly that the needs of our community and the people deserving health and welfare services are too great and too important to allow CFC's ability to meet those needs to be undermined further by controversy over organizational participation.

1983

FEDERAL FUND RAISING PROGRAM COORDINATING COMMITTEE FOR THE NATIONAL CAPITAL AREA

Mr. Clarence Thomas—*CHAIRMAN*
Chairman
Equal Employment Opportunity Commission

Mr. Gregory J. Ahart
Assistant Comptroller General for Human Resources
General Accounting Office

Mr. Richard A. Ashworth
Assistant Secretary for Administration, Acting
Department of Agriculture

Ms. Arlene Triplett
Assistant Secretary for Administration
Department of Commerce

Mr. David O. Cooke
Deputy Assistant Secretary for Administration
Department of Defense

Mr. William S. Heffelfinger
Assistant Secretary for Management and Administration
Department of Energy

Dr. John P. Horton
Assistant Administrator for Administration
Environmental Protection Agency

Mr. Raymond A. Fontaine
Assistant Administrator for Plans, Programs and Financial Management
General Services Administration

Mr. David Newhall, III
Chief of Staff
Department of Health and Human Services

Mr. Stephen May
Assistant Secretary for Legislation and Congressional Relations
Department of Housing and Urban Development

Mr. Kevin D. Rooney
Assistant Attorney General for Administration
Department of Justice

Mr. J. Robinson West
Assistant Secretary for Policy, Budget and Administration
Department of Interior

Mr. Alfred M. Zuck
Assistant Secretary for Administration and Management
Department of Labor

Mr. Walter C. DeVaughn
Assistant Public Printer for Management and Administration
Government Printing Office

Mr. Peter K. Hatt
Director of Headquarters Administration
National Aeronautics and Space Administration

Mr. Steven Leavey
General Manager, Headquarters Personnel Division
U.S. Postal Service

Mr. Richard T. Kennedy
Under Secretary for Management
Department of State

Ms. Cora P. Beebe
Assistant Secretary for Administration
Department of Treasury

Mr. Robert L. Fairman
Assistant Secretary for Administration
Department of Transportation

Mr. Dennis Kenneally
Associate Deputy Administrator for Administration (006)
Veterans Administration

Mr. Joseph S. Patti
Assistant to the Director
Office of Personnel Management

Mr. Ernest L. Hardt
Deputy Director of Personnel for Special Programs
Central Intelligence Agency

Mr. James T. Hackett
Associate Director for Management
International Communication Agency

Mr. John R. Bolton
Assistant Administrator for Program and Policy Coordination
Agency for International Development

Mr. Elam K. Hertzler
Executive Assistant/Chief of Staff
Department of Education

Mr. William J. Dircks
Executive Director for Operations
Nuclear Regulatory Commission

Mr. Glen A. Zimmerman
Associate Librarian for Management
Library of Congress

Mr. Donald M. McIntyre
National Vice President of the 14th District
American Federation of Government Employees

Mr. Douglas Holbrook
General Secretary/Treasurer
American Postal Workers Union

Ms. Cynthia Denton
Attorney
National Association of Government Employees

Mr. Halline Overby
Assistant Secretary/Treasurer
National Association of Letter Carriers

Mr. Eugene Raymond
Executive Director
National Federation of Federal Employees

Mr. Erie Doyle
Director of Labor Relations
National Alliance of Postal and Federal Employees

Mr. Thomas S. McFee (ex-officio)
Assistant Secretary for Personnel Administration
Department of Health and Human Services

JULY 1, 1982

DEPARTMENT OF STATE
WASHINGTON, D.C. 20520

October 15, 1982

1983 Combined Federal Campaign
National Capital Area
95 M Street, S.W.
Washington, D.C. 20024

Dear Sir:

I have contributed at least a small sum regularly over the years to the CFC. This year I took a look at the list of agencies supported and found that the disadvantaged and poor form probably a minority of the recipients. I don't know why I should support political action groups under the guise of direct help to unfortunate people. I really feel taken, and won't again.

Disappointedly

/s/ Charles W. Reynolds
CHARLES W. REYNOLDS
Foreign Service Officer
Department of State

1600 Crestwood Drive
Alex., Va. 22302
28 October 1982

1983 Combined Federal Campaign
National Capital Area
95 "M" Street S.W.
Washington, D.C. 20024

Dear Sir:

I have very serious reservations about contributing to "CFC" this year. Despite the fact that there are many worthy causes, the trend to add groups which are not charitable is ridiculous.

Instead of not contributing at all, I have decreased my gift to less than 30% of last years (which also was less than the previous years). Next year it will be zero unless CFC returns to its original purpose, i.e., raising money for charity or charitable purposes.

Disgustedly yours,

/s/ Cathey H. Hildebrandt
CATHEY H. HILDEBRANDT

ATTACHMENT #2

ANALYSIS OF 1983 COMBINED FEDERAL CAMPAIGN OF THE NATIONAL CAPITAL AREA

Despite unprecedented positive support from the President and leaders of the Administration this year, the 1983 Combined Federal Campaign of the National Capital Area will probably experience an increase of only five per cent in funds raised and a decrease of 5,000 to 10,000 contributors (See Table #1). Many of those who decided not to support the CFC this year and who reduced their levels of support did so in protest against the inclusion of one or more of the advocacy and special interest organizations in the CFC this year.

Due at least in part to the increasing dissatisfaction with the entire package of CFC supported agencies, this year's campaign experienced a dramatic increase in designated contributions and an almost equal decrease in undesignated contributions (See Chart #1). While many contributors designated their gifts deliberately and positively to support certain preferred agencies, a large but unquantifiable number designated their gifts in a negative sense to insure their gifts would not support a few disliked agencies. It is not the general intention of those in the latter group to deny support to all but a few organizations in the CFC, but that is the result necessitated by the current designations procedure.

The significant increase in designations this year (from 50% to 70% of the entire campaign in a single year) will most seriously impact the 193 United Way/United Black Fund agencies (of a total of 290 in the CFC), which will receive $600,000 to $700,000 *less* support from the CFC than last year. Many of the United Way/United Black Fund agencies are small in size, have limited community visibility and are not involved in programs which create high emotional support (such as research in the areas of dread diseases). These organizations traditionally have received the largest portion of their support from undesignated, general contributions. The United Way/United Black Fund has received 93% of the pool of undesignated funds in recent years, and 60% to 65% of designated funds.

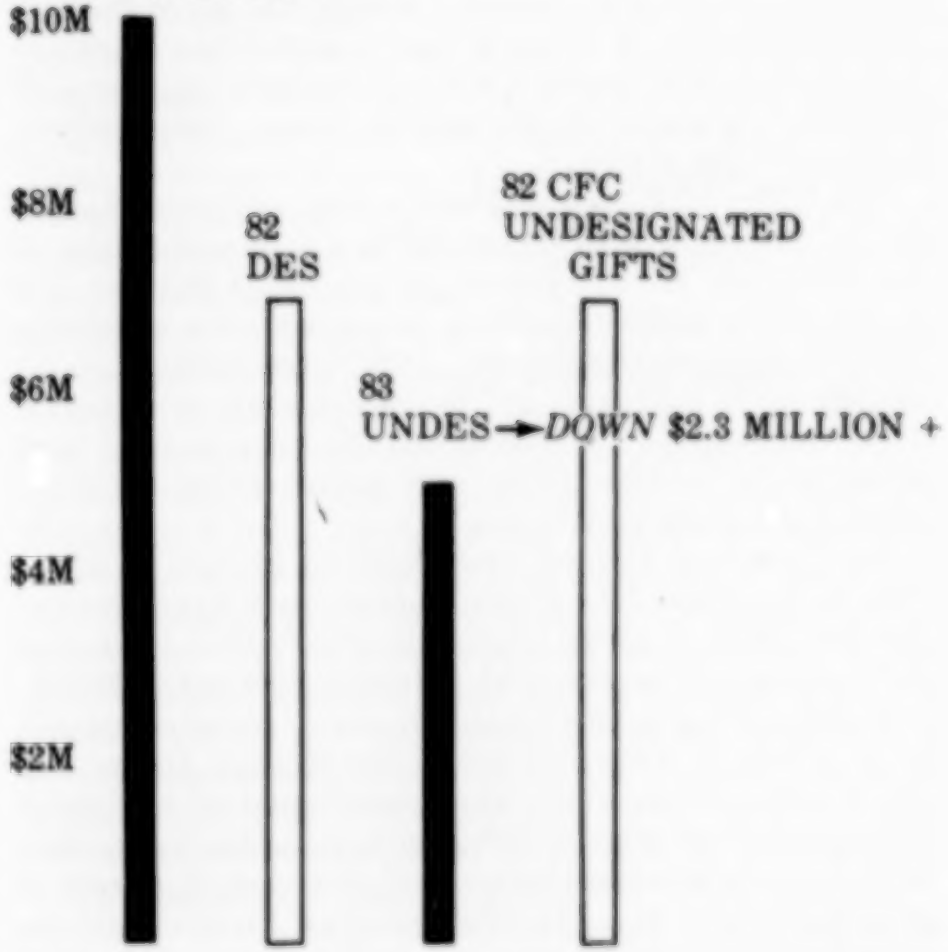
While the United Way/United Black Fund agencies probably will receive approximately $1.5 million more in designated contributions this year, the loss of support from the significantly decreased pool of undesignated funds probably will exceed $2.1 million, causing a net loss of between $600,000 and $700,000.

ATTACHMENT #2

TABLE #1 Comparison of 1982 and 1983 Combined Federal Campaigns

	$'s Raised	*# Givers*	*% Increase*
83 CFC (fall 1982)	$14,500,000(est.)	224,000(est)	+ 5%
82 CFC (fall 1981)	13,781,000	231,000	+11%
	+$ 719,000	− 7,000	

CHART #1 Designated and Undesignated Gifts in 82 and 83 CFC's



STATEMENT OF
DONALD J. DEVINE, DIRECTOR
UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
BEFORE THE
SUBCOMMITTEE ON MANPOWER AND HOUSING
OF THE
COMMITTEE ON GOVERNMENTAL OPERATIONS
OF THE
UNITED STATES HOUSE OF REPRESENTATIVES
MARCH 24, 1983

MISTER CHAIRMAN AND MEMBERS OF
THE SUBCOMMITTEE:

The Combined Federal Campaign is a remarkable institution. It is an important source of support for the private, voluntary, health and welfare charities that serve the people of this nation. It is also a major outlet of the charitable impulse that runs deeply in Federal workers, whether civil servants, members of the armed forces, congressmen, judges, or their staffs.

The Office of Personnel Management has been charged by the President with responsibility for administration of the Campaign. We are grateful to you, Mr. Chairman, and to this Subcommittee for being interested in the Campaign and for convening this hearing. Today's proceeding calls attention to the Campaign and to the important work that it does, and permits a discussion of the reforms—the most important in its twenty-two year history—that the Campaign is presently undergoing.

The Combined Federal Campaign was brought to life in 1961 by President John F. Kennedy through Executive Order No. 10927. Charity appeals in the Federal workplace did not begin, however, with President Kennedy's Executive Order. Prior to that Order, charities conducted appeals in a variety of ways in Federal installations around the world. Some solicitations were coordinated with Federal managers; others were undertaken on an ad hoc basis, often with no greater sophistication than the passing around of an empty coffee can. The heads of some Federal facilities permitted no solicitations whatsoever; at other Federal

worksites, no restrictions were imposed, and it was not uncommon for a collection to be taken up each week on behalf of one charity or another.

As the number and variety of appeals increased, however, so did the problems. Feelings were often bruised, and ill will resulted. Voluntary agencies could not understand why they were allowed to solicit in some Federal establishments and not in others, nor did they appreciate the fact that some charities seemed to have the support of Federal management, while other charities were allowed, at most, to collect passively by the placement of an unattended contribution jar in an obscure corner of a lunchroom. And Federal employees, for their part, were often made unhappy by repeated solicitations that seemed to abuse their philanthropy.

As a result, President Kennedy directed that all ad hoc solicitations be ended, and that worthy charities be permitted to solicit in the Federal workplace through a single, annual drive combining all participating agencies. Thus was born the Combined Federal Campaign. Responsibility for its execution was vested at the outset in the Civil Service Commission. That responsibility has passed to the Commission's successor institution, the United States Office of Personnel Management.

President Kennedy's Order directed that the Campaign be open to "national, voluntary health and welfare agencies and such other national agencies as may be appropriate." For nearly twenty years, this criterion proved to be of little controversy. Everyone seemed to understand that the Combined Federal Campaign was intended to support the traditional kinds of charities that undertake research into the causes and cures of dread diseases or that render health and welfare services directly to needy people. The world of not-for-profit organizations had always included many other kinds of groups and institutions, of course, ranging from private schools and universities to opera guilds, sports associations, recreation societies, and many more, including the newer "advocacy groups" such as legal defense funds and public policy research organizations, all of which number today in the many tens of thousands. But it had never

been thought appropriate—and certainly not practical—for these kinds of institutions to participate in the Combined Federal Campaign, especially since they were not engaged in supplying health and welfare services directly to human beings who were ill, infirm, poor, or distressed, thereby lessening the burdens of government in meeting such needs.

Thus, until 1980, the Civil Service Commission and the Office of Personnel Management confined participation in the Campaign to health and welfare charities. In that year, however, the United States District Court for the District of Columbia, acting on the petition of two legal defense funds, held that the eligibility criteria set forth in President Kennedy's Executive Order and in the ground rules adopted under it by the Commission were not precise or clear enough to sustain such an admissions policy. The court upheld the claims of the two legal defense funds that, based on the rules as they were then written, the exclusion of "advocacy" groups from the Campaign constituted an improperly confined exercise of discretion by OPM. In his decision, however, Judge Gerhard Gesell by no means declared that the CFC had to be opened to any not-for-profit agency that applied. Rather, he simply called upon OPM to clarify the rules. As he stated: "(i)t behooves the government officials responsible for the program to re-examine the basic premises on which the program was established so that more acceptable standards can be developed which will assure continuation of the government's significant and useful support for worthy charitable solicitation."

Subsequent to Judge Gesell's Order, and with the hope of reducing the potential for further litigation, new and different organizations were admitted to the Campaign at a very rapid rate in 1981 and 1982. Many of these were legal defense funds and advocacy groups, such as the NAACP Legal Defense and Educational Fund, Inc., the Conservative Legal Defense and Education Fund, the Puerto Rican Legal Defense and Education Fund, the Center for Auto Safety, the National Organization for Women Legal Defense and Education Fund, and the National Right to Work Legal Defense and Education Fund.

At the same time, participation in the Campaign by these groups provoked increasing concern and even outright hostility. Complaints started coming in to OPM—slowly at first, in a torrent by the end of the 1982 Campaign—that we were "politicizing" the CFC. Federal workers across the country, Federal executives charged with overseeing the Campaign and insuring its success, union rank-and-file, union leaders, traditional health and welfare charities, large and small, Congressmen, and countless members of the public all complained in overwhelming numbers that the inclusion of advocacy and political groups would destroy the spirit and cooperation necessary to a successful Campaign, and would thereby kill it.

These matters came to a head in 1982 when many Federal workers and their organizations threatened to boycott the Campaign, and in some cases carried out those threats. In Bremerton, Washington, for example, Campaign contributions were off from last year by 12 percent due to union boycotts, which spilled over, by the way, to effect the private United Way Campaign there as well. In Cleveland and Colorado Springs, the Campaigns were off by over 10 percent; in Boise, Idaho, the figure was nearly 20 percent. This is money that will not be going to the poor and the needy in these communities. As employees told us in letter after letter, they were outraged, and not without justification, that the resources of the Government—including the volunteered duty time of thousands of Federal employees who serve as key workers in their installations all across the globe—were being deployed in aid of organizations that were not rendering health or welfare services but instead were propagating the views of political, social, and partisan causes. Only the active intervention of responsible leaders of employee unions, of Federal managers, and in many instances of Congressmen, prevented the 1982 boycotts from taking fire and kept the 1982 Campaign from being an unmitigated disaster.

Not surprisingly, therefore, at the close of the last Campaign letters by the hundreds came pouring in to the White House and OPM, urging that the CFC be restored to its health and welfare footing, and admonishing us that the re-

markable exertions of 1982 could not be sustained in the future. We were told, in no uncertain terms, that unless the Campaign were reformed, employee boycotts—some concerted, others passive, but all of them devastating—would bring the life of the Campaign to an end. With my written testimony, I have submitted for the Subcommittee's consideration a small sampling of this correspondence. Let me take a moment here to share with you some of the Congressional sentiment on the matter.

I can confidently assure this Subcommittee that the Congressional response to the 1982 inclusion of political and ideological groups has been overwhelmingly broad based, bipartisan, and almost universally negative. For example, Republican Congresswoman Claudine Schneider writes, in her letter of September 23, 1982, that "[t]he history of the CFC has been one of raising funds from various government employees to support charitable services for those in need of such assistance. The inclusion of the Right to Work Committee as a recipient has injected politics into an area which the Congress never intended to become a focus for fostering a certain ideological viewpoint. The Right to Work Committee has no place in a fundraising campaign of this nature. I honestly feel that a very serious error in judgment has been made, one which needs to be addressed and corrected immediately." Similarly, in his letter of October 4, 1982, Congressman Fernand J. St. Germain writes: "I strongly urge you, Mr. Devine, to rescind [these changes] which would divert money that is desperately needed to provide the basic services of medical care, shelter and adequate nutrition to so many of our citizens who live in need at this time of reduced federal funding of social programs." Again, in his letter of October 8, 1982, Congressman Norman Dicks, in clear and unambiguous language, writes "I strongly urge you to reconsider your position and to support deletion of political groups from the CFC." In an earlier letter, dated September 30, 1982, Congressman Dicks had expressed the opinion that "[t]he CFC was intended to provide needed funds for health and human service organizations, not to involve itself in ideological battles on political issues." I have received similar letters

of opposition or expressions of concern on behalf of constituents from many other members of Congress, including Congressmen Floyd Fithian, Mary Rose Oakar, William Brodhead, G. William Whitehurst, Andy Jacobs, Olympia Snowe, Doug Walgren, and Senators Henry Jackson, Charles Percy, Arlen Specter, Gordon Humphrey, Slade Gorton, and Ted Stevens.

It was against this background that President Reagan considered the purposes, problems, and methods of the Combined Federal Campaign, and has, this year, issued a new Executive Order that goes to the heart of the matter. For the first time, a President has clearly articulated the Campaign's objectives. As the President declared, they are: "...to lessen the burdens of government and of local communities in meeting needs of human health and welfare; to provide a convenient channel through which Federal public servants may contribute to these efforts; to minimize or eliminate disruption of the Federal workplace and costs to Federal taxpayers that such fund-raising may entail; and to avoid the reality and appearance of the use of Federal resources in aid of fund-raising for political activity or advocacy of public policy, lobbying, or philanthropy of any kind that does not directly serve needs of human health and welfare."

In furtherance of these objectives, then, the President has accepted Judge Gesell's invitation and has provided precise criteria of admission to and exclusion from the Campaign. The Campaign is to be open to "...voluntary, charitable, health and welfare agencies that provide or support direct health and welfare services to individuals or their families. Such direct health and welfare services must be available to Federal employees in the local campaign solicitation area, unless they are rendered to needy persons overseas. Such services must directly benefit human beings, whether children, youth, adults, the aged, the ill and infirm, or the mentally or physically handicapped. Such services must consist of care, research, or education in the fields of human health or social adjustment and rehabilitation; relief of victims of natural disasters and other emergencies; or assistance to those who are impoverished and

therefore in need of food, shelter, clothing, education, and basic human welfare services." Meanwhile, the President has provided expressly that "(a)gencies that seek to influence the outcomes of elections or the determination of public policy through political activity or advocacy, lobbying, or litigation on behalf of parties other than themselves shall not be deemed charitable health and welfare agencies and shall not be eligible to participate in the Combined Federal Campaign."

In summary, in response to an outpouring of criticism—from Federal employees and executives, from both the military and the civilian sectors, from employee unions and union leaders, from charities large and small, and from Congress and members of the public—the President has put the Campaign back on its feet and has taken the measures that will insure its success in the future. As indicated by the attached editorials from the *Washington Post* and the *Minneapolis Star and Tribune*, these changes are already receiving editorial support. The Combined Federal Campaign and the good work it does are thoroughly deserving of the support of the Federal workforce. We know that the Campaign also has the support of Congress and of this Subcommittee, and for that, Mr. Chairman, we are abidingly grateful.

I shall be happy to respond to any questions the Subcommittee may have.

THE WASHINGTON POST—Sunday, February 20, 1983

WHERE YOUR CHARITY MONEY GOES

How you do—or don't—give money to charities is your private business, but many of us have certain strong opinions about which agencies are most deserving and which have more to do with political and legislative objectives than with direct health and welfare care for people in need. And when it comes to the annual one-fund campaigns—the local United Way and, in government, the giant Combined Federal Campaign—the decisions on what groups to include becomes even more touchy. Where do you draw any line?

President Reagan has just redrawn one—ordering that the Combined Federal Campaign be limited in the future to voluntary organizations directly involved in health and welfare activities. It is a sensible and important decision for the local health and welfare agencies, even though it is drawing sharp criticism from a broad range of groups that you may know and love, or dislike intensely, that now find themselves off the one-fund recipient list.

It all came to a head last year, when a court order permitted the National Organization for Women Legal Defense Fund to participate in this year's CFC drive. That opened the door to all sorts of organizations—from the National Right to Life to Planned Parenthood to the National Right to Work Legal Defense and Education Foundation—to get in on the campaign, payroll deductions and all. This then sparked boycotts by various unions, protests from across the spectrum and—here's the worst part—less money for the local health and welfare agencies that benefit from the United Way and CFC campaigns.

In response to a request by the United Way of America, federal employee organizations and labor unions, President Reagan has ordered expressly excluded from the CFC "any organization that seeks to influence elections or public policy determinations through political activity or advocacy, lobbying or litigation on behalf of parties other than itself," according to Donald Devine, director of the Office of Personnel Management. As Mr. Devine notes, federal workers

"remain absolutely free, of course, to contribute to such organizations if they wish, but the taxpayers will not be asked to provide the fund-raising channel."

Fair enough. The government, through the CFC, should not be a collection agent for clearly political groups. That kind of "charity" begins at home, or someplace else.

MINNEAPOLIS STAR AND TRIBUNE—
Friday March 4, 1983

KEEPING CHARITY WHERE IT BELONGS

President Reagan has directed that federal workers' payroll-deducted charitable contributions go only to voluntary health and welfare groups. His wise action removes an unfortunate pall from national charity drives.

Last fall, Twin Cities unions representing federal workers caused a ruckus by boycotting the 1982 United Way campaign. Their grievance wasn't with United Way, but with the Combined Federal Campaign, an umbrella federal-employee drive that distributes funds to United Way and other groups. The unions were angered that the National Right to Work Legal Defense Fund, which they say is anti-union, had qualified to receive money collected in the 1982 combined campaign.

The unions were right. Charitable contributions should not go to a political advocacy group. But the Reagan administration wasn't to blame; the right-to-work group qualified because of a court order permitting participation by the National Organization for Women Legal Defense Fund. The order also opened the campaign to Planned Parenthood, the Sierra Club Legal Defense Fund, the Puerto Rican Legal Defense and Education Fund and others. The resulting brouhaha jeopardized truly charitable health and welfare groups who depend on United Way and the combined campaign.

In response, Reagan ordered that the combined campaign exclude agencies "that seek to influence the outcomes of elections or the determination of public policy through political activity or advocacy, lobbying or litigation on behalf of parties other than themselves." Good for the president. Political advocacy groups should get their money elsewhere.

ATTACHMENT D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-0928

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., ET AL., PLAINTIFFS,

v.

HON. DONALD J. DEVINE, DIRECTOR, UNITED STATES OFFICE OF PERSONNEL MANAGEMENT DEFENDANT.

AFFIDAVIT

Joseph A. Morris, being duly sworn, deposes and says:

1. I am the General Counsel of the United States Office of Personnel Management (OPM). In that position, I serve as the principal legal advisor to the Director of OPM on matters falling within his authority, including oversight of the Combined Federal Campaign (CFC). The statements made herein are based upon personal knowledge obtained in the course of performing my official duties.

2. On February 10, 1983, the President of the United States signed Executive Order No. 12404, titled "Charitable Fund-Raising," amending Executive Order No. 12353 of March 23, 1982. The President's directive was announced at a press conference held in the afternoon of February 10, 1983, in the Executive Conference Room of OPM's Headquarters in Washington, D.C. Because the Director of OPM was not able to attend the press conference, I was designated to speak for OPM in his stead.

3. At the press conference, I explained that henceforth the CFC would support only voluntary health and welfare programs that are aimed directly at the needs of the poor, the infirm, the hungry, and the truly needy. I stated that under the new Executive Order, the purposes of the CFC were now clear: "[t]hey are to lessen the burdens of government and of local communities in meeting needs of human health and welfare; to provide a convenient channel through which Federal public servants may contribute to these efforts; to minimize disruption of the workplace and costs to taxpayers; and to avoid the reality and appearance of the use of Federal resources in aid of fund-raising for political and advocacy groups." I recited the kinds of services enunciated in the Executive Order that would qualify an organization providing those services to participate in the CFC. In addition, I said that under the new Executive Order, any organization that seeks to influence elections or public policy determinations through political activity or advocacy, lobbying, or litigation on behalf of parties other than itself would be excluded from the CFC. Furthermore, I said that the new Executive Order provided the specificity which had been lacking in some CFC rules of the past. My remarks followed closely the statement quoted in the CFC press release issued by OPM on Februry 10, 1983 (attached as Exhibit 1 to this Affidavit).

4. Following my statement, representatives of certain organizations participating in the CFC were given the opportunity to make statements. I then entertained questions from the assembled members of the press, although I did so under the *caveat* that I would refuse to speculate on individual cases of eligibility.

5. During the questioning, I was asked, but refused to comment, about the eligibility of several legal defense funds. With respect to two other organizations, the NAACP Special Contribution Fund and the United Negro College Fund, while declining to speculate with any particularity, I did say that I would be surprised if they did not meet the new eligibility criteria. In addition, I was called upon to distinguish "legal aid societies" from "legal defense funds." I did so by stating that a legal aid society makes its services available to individuals solely on the basis of their financial need, without distinguishing on the basis of a particular cause, while legal defense funds are selective of clients on the basis of whether or not they have a cause, claim, or defense that the legal defense fund wishes to advance.

6. Neither at the press conference nor at any other time have I stated that a specific organization would be excluded from the CFC under the new CFC Executive Order and the regulations which will be issued to implement that Executive Order.

7. As of this date, regulations implementing Executive Order No. 12404 have not been published. When they are published, there will follow a thirty-day period for public comment. The comments may well result in changes to the proposed regulations. Until the regulations have been made effective in final form, and until OPM has had the opportunity to take action on the application of an organization in light of eligibility requirements contained in the regulations, it would be speculation to state whether or not a particular organization would be found eligible to participate in the CFC.

/s/ Joseph A. Morris
JOSEPH A. MORRIS

Sworn and subscribed before me this 12th day of April, 1983, in the City of Washington, District of Columbia.

/s/ Helen B. Welch
HELEN B. WELCH
Notary Public

My Commission Expires:
MARCH 31, 1987

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-0928

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., ET AL., PLAINTIFFS,

v.

DONALD J. DEVINE, DIRECTOR, UNITED STATES OFFICE OF PERSONNEL MANAGEMENT DEFENDANT.

SUPPLEMENTAL AFFIDAVIT OF EMANUEL OWENS

EMANUEL OWENS, being duly sworn, deposes and says:

1. Attached hereto as Exhibit N is a true and accurate copy of a memorandum dated March 4, 1983, from Donald J. Devine received by my office.

2. Attached hereto as Exhibits O, P, and Q are true and accurate copies of letters from local CFCs received by my office relating to the 1981 Combined Federal Campaign.

3. During the course of my work as coordinator of CFC activities for plaintiff NAACP/LDF, I have had a number of conversations with local CFC officials in which they have expressed concern with problems they have had in 1981 and 1982 because of the late dates by which OPM has informed them of the organizations found to have national eligibility. Attached hereto as Exhibit R are true and accurate copies of letters from local CFCs relating to this problem.

4. In 1982 NAACP/LDF received responses from local CFCs to applications as late as October. Indeed, we have still not heard from a significant number of CFCs. Attached

hereto as Exhibit S is a true and accurate copy of a letter from OPM relating to some of our appeals.

/s/ Emanuel A. Owens
EMANUEL OWENS

APRIL 25, 1983

Sworn to and subscribed before me this 25th day of April, 1983.

/s/ Ivaline R. Passé
IVALINE R. PASSÉ
Notary Public

UNITED STATES OFFICE OF
PERSONNEL MANAGEMENT
Washington, D.C. 20415

March 4, 1983

CFC PARTICIPANTS AND ORGANIZATIONS THAT HAVE INQUIRED ABOUT CFC PARTICIPATION

On February 10, 1983, President Reagan signed Executive Order No. 12404 for the Combined Federal Campaign which amends Executive Order No. 12353. A copy of the new order and the OPM news release announcing it are attached.

Current CFC regulations will be changed to implement the order. This will involve publication of proposed changes in the *Federal Register*, a period of public comment, the evaluation and assimilation of the comments, and then publication of the final regulations. At that point, we will be in a position to receive, consider, and act upon applications from national voluntary organizations for participation in the fall 1983 Campaign.

We will send you the proposed and final changes to the regulations. With the latter will be a notification of the deadline for receipt of applications.

The regulation changes and application processing will be accomplished as quickly as possible this year so that fall 1983 Campaign planning can begin as early as possible. To help insure that this is done, you may wish to submit a complete application at this time, prepared in accordance with the current July 6, 1982, regulations. It would then be modified, after the final regulations are published, to comply with changes that may affect your particular organization.

Thank you in advance for your interest and cooperation.

/s/ DONALD J. DEVINE
Director

Exhibit N, Owens Aff. CA No. 83-0928

ALBUQUERQUE-SANTA FE FEDERAL
EXECUTIVE BOARD
2930 Yale, SE, Rm. 109A
Albuquerque, N.M. 87106
Telephone: (505) 766-2230
FTS 474-2230

August 4, 1981

Mr. Charles Stephen Ralston
First Assistant Counsel
NAACP Legal Defense and
Educational Fund, Inc.
10 Columbus Circle
New York, N.Y. 10019

Dear Mr. Ralston:

In reference to your memorandum to me of July 28, 1981, I regret to inform you that the Federal Coordinating Group will not reverse our earlier determination.

The OPM guidance suggested regarding a possible extension of 60 days to our local time table, but due to our irrevocable local printing schedule, it was impossible to reverse our decision. Since the adoption of the extension in question is discretionary, your speculative deduction is not valid. Your reference to the National Resources Defense Council Inc. vs. Donald J. Devine Stipulation of Dismissal is noted only as it relates to the plaintiff.

Upon a review of our files, we find your submission memorandum was indeed a duplicate and thus the signature was not original. It is the decision of the Federal Coordinating Group that your amended signature block sent me by memorandum dated July 28, 1981 does not override the earlier submission.

Your interest in participating in the Albuquerque CFC for 1982 is appreciated. Should OPM accept your organization as an NSA member for next year's campaign, we

would be happy to consider your application for the 1983 campaign in our area.

Sincerely,

/s/ CELESTINO PAPUYO

Chairman
Federal Coordinating Group

Ex. O, Owens Aff. CA. No. 83-0928

UNITED STATES POSTAL SERVICE
Lynchburg, Virginia 24506

September 8, 1981

NAACP Legal Defense and Educational Fund, Inc.
10 Columbus Circle
New York, New York 10019

Attention: Mr. Charles Stephen Ralston

Gentlemen:

The Lynchburg Combined Federal Campaign Committee met on June 17, 1981, and approved those agencies which had submitted application to participate as a National Service Agency. Your application was received after that date.

Members of the committee were then contacted when late applications were received and their decision was that further consideration should not be given. Therefore, I must regretfully advise you that your application has been denied.

Yours very truly,

/s/ R.F. RICHARDSON

Chairman
Lynchburg CFC Committee

Ex. P, Owens Aff. CA No. 83-0928

COMBINED FEDERAL CAMPAIGN OF
SAN DIEGO COUNTY
Suit M-101, 937 North Harbor Drive
San Diego, CA 92132 Tel.(714) 234-5415

15 July 1981

Mr. Charles Stephen Ralston
First Assistant Counsel
NAACP Legal Defense & Education Fund, Inc.
10 Columbus Circle
New York, New York 10019

Dear Mr. Ralston:

This acknowledges receipt of your 13 July 1981 letter which supplements your 18 June application to participate in our Fall '81 Combined Federal Campaign (CFC). Both will be placed before our CFC Committee on 29 July and we will advise you of the committee's action shortly after that date.

The following is for information:

—We understand that the Office of Personnel Management (OPM) has just mailed the guidance on CFC applications which you mentioned in the fourth paragraph of your letter. If this written guidance causes you to make any additional comment, we will be happy to include that comment in our submission to our committee on 29 July.

—You are correct in saying that the name of an agency does not count in the 25-word description used in contributors directories. If your application is approved by our CFC Committee, we will modify the description provided in your application only enough to make it conform to the style of the others in our current directory. I am enclosing a copy of that directory for your information. (Please note that we printed our directory early in order to reach the substantial part of our contributor force which is deployed to the Indian Ocean aboard ships of the U.S. Navy—people on whom we are heavily dependent for success). We are planning to issue a directory supplement and radio the distant ships if

our CFC committee approves any of the agency applications received late because of late OPM action.

Sincerely,

/s/ D.W. BROWN
Director

Copy to:
Mr. James J. O'Keefe, CFC Committee Chairman

Ex. Q, Owens Aff. CA No. 83-0928

ROANOKE AREA
FEDERAL EXECUTIVES ASSOCIATION
Poff Federal Building, 210 Franklin Road, S.W.
Roanoke, Virginia 24011

September 7, 1982

NAACP Legal Defense and
Educational Fund, Inc.
10 Columbus Circle, Suite 2030
New York, NY 10019

SUBJ: Roanoke Area Combined
Federal Campaign Applications

Over the past 30 days or so the Local Federal Coordinating Committee (LFCC) has received a large number of applications for inclusion in the local Combined Federal Campaign as National Service Agency participants. By and large, the applications were adequate, although there were wide variations in the quality and methods of establishing a "Direct and substantial presence in the local campaign community".

Obviously, much of the criteria is new to you as it is to us. This circumstance coupled with the rather tight deadlines has compounded our difficulty in attempting to arrive at a fair and equitable decision for all concerned. In some instances we have also been unable to respond individually to your inquiries.

In view of these circumstances our LFCC has voted to accept *all* applications, as submitted for inclusion in the local CFC for *1982*. PLEASE NOTE THAT THIS APPROVAL APPLIES ONLY TO THE CURRENT (1982) CAMPAIGN. Participation in the 1983 CFC will require submission of a new application for 1983. Hopefully, the ensuing year will allow ample time for all to become better acquainted with the methods for preparing and evaluating applications for CFC participation.

The local CFC will be conducted during September and October. Kick-off date is not yet firm but will probably be between September 22-30.

/s/ A.E. KESSLER

Chairman, Local Federal Coordinating Committee
Roanoke Area Combined Federal Campaign

Ex. R, Owens Aff. CA No. 83-0928

DEPARTMENT OF THE ARMY
HEADQUARTERS 5TH INFANTRY DIVISION,
MECHANIZED, AND FORT POLK
FORT POLK, LOUISIANA 71459

9 September 1982

Mr. Emanuel A. Owens, Jr.
Coordinator, CFC
NAACP Legal Defense & Eduational Fund, Inc.
10 Columbus Circle
New York, New York 10019

Dear Mr. Owens:

It is a pleasure to inform you that your agency has been approved for admission to the Fall 1982 Fort Polk Area Combined Federal Campaign, Fort Polk, Louisiana. The period of 22 October through 2 December has been set for the conduct of our campaign.

Because of the late receipt of guidance from the Office of Personnel Management, we have been "running a little behind" in formulating our plans; however, we are looking forward to another successful campaign this year.

Sincerely,

/s/ Patrick W. Clark
PATRICK W. CLARK
LTC, FA
Director of Personnel and
Community Activities

DEPARTMENT OF THE ARMY
HEADQUARTERS 7TH INFANTRY DIVISION
AND FORT ORD
FORT ORD, CALIFORNIA 93941

13 September 1982

NAACP Legal Defense and Education Fund
1975 Sutter St., Suite #1
San Francisco, CA 94115

Dear Sir:

We are pleased to inform you that your request for inclusion in the Monterey County Combined Federal Campaign has been reviewed and approved by our Federal Coordinating Committee.

We wish to indicate, though, that due to the fact that the list of OPM approved organizations reached us very late this year, we were able to make only a superficial assessment of local involvement of NSA affiliates. As a result, we adopted a liberal inclusion in the 1982 campaign. However, we plan a more thorough review in 1983, at which time we will require specific information on activities affecting our C.F.C. area.

The description of your services, as outlined in your application, will be used in the 1982 brochure, and upon completion of the campaign, we will contact you regarding contributions received for your agency.

In the meantime, should you have any questions, please do not hesitate to contact our Combined Federal Campaign Officer.

Sincerely,

/s/ Ray F. Cole
RAYMOND F. COLE
COL, FA
Executive Chairman

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

October 14, 1982

Mr. Emanuel A. Owens, Jr.
Coordinator, CFC
NAACP Legal Defense and Educational Fund, Inc.
10 Columbus Circle
N.Y., N.Y. 10019

Dear Mr. Owens:

This is in response to your letter of October 6, 1982, appealing the decisions of local Federal coordinating committees to deny your agency admission to their local Combined Federal Campaigns.

In CFC Memorandum No. 82-13, dated September 3, 1982, I issued guidance relating to (1) the timeliness of agency appeals from local CFC eligibility decisions, and (2) the information I would need from an agency in order to be able to decide on its appeal. Regarding (1), subsequent to September 13, 1982, it has been necessary for appeals to be submitted to my office within ten business days from the date the notification of rejection was issued. Regarding (2), all such appeals must include a copy of the letter of rejection and the specific and detailed information the agency has of its local eligibility in each case. Based upon your agency's letter of appeal of September 10, 1982, which I answered on September 16, 1982, I conclude that you have understood this guidance relating to the appeal process.

In your letter of appeal of October 6, 1982, however, you state that you seek review of all denials to local Combined Federal Campaigns. Toward that end you attach rejection letters from seventy-six local CFCs. In all but thirteen of these cases, however, your appeals have been submitted beyond the time provided for in the above referenced guidance. Accordingly, the only appeals I can now act upon are those from the following locations:

Lancaster, Pennsylvania
Hot Springs, Arkansas
Norton AFB, California

Ex. S. Owens Aff. CA No. 83-0928

Bath, New York
Rochester, New York
Ashtabula, Ohio
Longview, Texas
Clarksburg, West Virginia
Corvallis, Oregon
New Orleans, Louisiana
Zanesville, Ohio
Morristown, Tennessee
Dyess AFB, Texas

The letters of rejection from the locations in the right hand column above are undated. Accordingly, I am treating these as timely appeals.

Included with your letter of October 6, 1982 was information about your local eligibility in only five of the above locations. I have found that information to be sufficient to enable me to overturn the local decisions in those five locations. Accordingly, you are eligible to participate in the following local campaigns.

Hot Springs, Arkansas
Bath, New York
Rochester, New York
Longview, Texas
Dyess AFB, Texas

By copy of this letter I am officially advising the local Federal coordinating committees in those areas of my decision.

Sincerely,

/s/ Donald J. Devine
DONALD J. DEVINE
Director

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-0928

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., ET AL., PLAINTIFFS,

v.

DONALD J. DEVINE, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT, DEFENDANT.

ORDER

This matter is before the Court upon defendant's motion to dismiss this action on the ground that it is premature. Plaintiff's motion for a preliminary injunction is also before the Court. For the reasons which follow, both motions are denied.

This action concerns the eligibility of plaintiffs, various charitable organizations referring to themselves as "legal defense funds," to participate in the Combined Federal Campaign (CFC). The CFC is the only means by which charitable organizations are able to solicit contributions from federal employees at their work stations. Previously, legal defense funds had been denied participation in the CFC because of a regulation limiting eligibility to organizations providing "direct services." This rule was challenged by two legal defense funds (who are also plaintiffs in the instant case) on various grounds. Judge Gesell of this Court issued a very narrow ruling discarding the "direct services" requirement as it then existed on the ground that it lacked "the precision necessary to comport with constitutional requirements." *NAACP Legal Defense and Educational Fund, Inc.* v. *Campbell*, 504 F. Supp. 1365, 1368 (D.D.C. 1978).

Since then, on February 10, 1983, the President issued Executive Order No. 12404, which imposed a new "direct

services" requirement on the CFC and containing a greater amount of specificity than the previous rule, evidently in an effort to prevent it, too, from being declared void for vagueness. The instant suit is plaintiffs' challenge to that Executive Order.

Defendant has moved to dismiss the suit on the ground that since regulations putting the Executive Order into effect have not yet been promulgated (and therefore no decisions have been made regarding plaintiffs' eligibility to participate in the 1983 CFC), the cause is not ripe. Defendant argues that plaintiffs should be required to wait for the regulations to be promulgated through notice and comment procedures, allow their applications for participation in the CFC to be processed, and then resort to judicial action only if at such time they are denied participation. However, as plaintiffs note, defendant has publicly expressed the government's intention to exclude "any organization that seeks to influence . . . public policy determinations through . . . litigation on behalf of parties other than itself." OPM Press Release "President Orders Federal Drive to Focus on Charity for Truly Needy" (Feb. 10, 1983), at 1, Exh. A to McClure Affidavit. Accordingly, it might well be futile to require plaintiffs to go through the motions of exhausting administrative remedies. Therefore, the motion to dismiss shall be denied.

With respect to plaintiffs' motion for preliminary injunction, it would not be appropriate to grant such relief at this time. Plaintiffs seek that defendant be enjoined from denying them the ability to participate in the fall 1983 CFC. Yet at this early stage where no CFC applications have been processed (nor even received from some of the plaintiffs) there is no basis for determining whether plaintiffs would be eligible to participate in the CFC even under the uncontroverted requirements of the program. As such, plaintiffs have not demonstrated that they will sustain immediate and irreparable harm absent the issuance of an injunction, a prerequisite to such relief under the criteria established by the Court of Appeals in *Virginia Petroleum Jobbers Association* v. *F.P.C.*, 259 F.2d 921 (D.C. Cir. 1958). As a result, this motion also must be denied.

In light of the foregoing, it is, by the Court, this 5th day of May, 1983.

ORDERED, that defendant's motion to dismiss shall be and hereby is denied, and it is

FURTHER ORDERED, that plaintiffs' motion for a preliminary injunction shall be and hereby is denied, and it is

FURTHER ORDERED, that defendant's motion for an enlargement of time in which to respond to plaintiffs' motion for summary judgment shall be and hereby is granted, defendant's opposition to said motion to be filed within 10 days of the date of this Order, telephonic notice thereof to be given to the parties this date.

/s/ Joyce Hens Green
JOYCE HENS GREEN
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action 83-0928

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., ET AL., PLAINTIFFS,

v.

HONORABLE DONALD J. DEVINE, DIRECTOR, UNITED STATES OFFICE OF PERSONNEL MANAGEMENT, DEFENDANT.

DEFENDANT'S STATEMENT OF GENUINE ISSUES

Pursuant to Local Rule 1-9(h), the following is submitted by defendant in response to the Statement Of Material Facts As To Which Plaintiff Contends There Is No Material Issue. These responses employ the enumeration utilized by plaintiffs in their Statement.

1. On January 19, 1981, this Court issued a memorandum opinion and order ordering that pending or future application of plaintiffs NAACP Legal Defense and Educational Fund, Inc., and Puerto Rican Legal Defense and Education Fund, Inc., to participate in the Combined Federal Campaign (CFC), not be denied on the basis of the "direct services" requirement as it was then set forth in Section 5.21 of the *Manual of Fund-Raising Within the Federal Service for Voluntary Health and Welfare Agencies.* (504 F. Supp. 1365 (D.D.C. 1981).) Plaintiffs NAACP Legal Defense and Educational Fund, Inc., Puerto Rican Legal Defense and Education Fund, Inc.; Federally Employed Women Legal and Education Fund, Inc.; Indian Law Resource Center; and National Resources Defense Council, Inc., applied for and were admitted to the CFC conducted in the fall of 1981 and the fall of 1982. (Supplemental Affidavit of P. Kent Bailey.) Plaintiffs Lawyers' Committee for Civil Rights Under Law, and Sierra Club Legal Defense Fund, Inc. did not apply to participate in the CFC conducted in the fall of 1981. (Supplemental Affidavit of P. Kent Bailey.) These organizations did participate in the CFC conducted in the fall of 1982. (Supplemental Affidavit of P. Kent Bailey.)

2. On June 9, 1981, Defendant announced that he saw a "need for clearer direction and more precise standards" for the CFC, and that the provisions of the *Manual* were inadequate to meet these needs. (Affidavit of Charles Stephen Ralston, Ex. B.) In 1982, Defendant issued new CFC regulations which did not include the "direct services" eligibility criteria which had been included in the CFC *Manual.* (5 C.F.R. Part 950.)

3. On February 10, 1983, the President of the United States signed Executive Order 12404, "Charitable Fund-Raising," amending Executive Order 12353. The purpose of the Executive Order as stated, *inter alia,* was "to lessen the burdens of government and of local communities in meeting needs of human health and welfare." (48 *Fed. Reg,* 6685 (Feb. 15, 1983).) Executive Order 12404 provides that, "The objectives of the Combined Federal Campaign are to lessen the burdens of government and of local communities in meeting needs of human health and welfare; to provide a convenient channel through which Federal public servants may contribute to these efforts; to minimize or eliminate disruption of the Federal workplace and costs to Federal taxpayers that such fund-raising may entail; and to avoid the reality and appearance of the use of Federal resources in aid of fund-raising for political activity or advocacy of public policy, lobbying, or philanthropy of any kind that does not directly serve needs of human health and welfare." (*Id.*) Executive Order 12404 further provides that:

> "To meet these objectives, eligibility for participation in the Combined Federal Campaign shall be limited to voluntary, charitable, health and welfare agencies that provide or support direct health and welfare services to individuals or their families. Such direct health and Welfare services must be available to Federal employees in the local campaign solicitation area, unless they are rendered to needy persons overseas. Such services must directly benefit human beings, whether children, youth, adults, the aged, the ill and infirm, or the mentally or physically handicapped. Such services must

> consist of care, research or education in the fields of human health or social adjustment and rehabilitation; relief of victims of natural disasters and other emergencies; or assistance to those who are impoverished and therefore in need of food, shelter, clothing, education, and basic human welfare services. . . .
>
> Agencies that seek to influence the outcomes of elections or the determination of public policy through political activity or advocacy, lobbying, or litigation on behalf of parties other than themselves shall not be deemed charitable health and welfare agencies and shall not be eligible to participate in the Combined Federal Campaign."

(*Id.*)

4. Executive Order 12404 was announced at a press conference held by the United States Office of Personnel Management (OPM) on February 10, 1983. (Affidavit of Joseph A. Morris.) In the press release distributed at the press conference, and in the remarks of OPM's General Counsel at the press conference, it was explained that under the new Executive Order, any organization that seeks to influence elections or public policy determinations through political activity or advocacy, lobbying, or litigation on behalf of parties other than itself would be excluded from the CFC, and that a legal aid society which makes its services available to individuals solely on the basis of their financial need would be permitted to participate in the CFC, while legal defense funds which select their clients on the basis of whether or not they have a cause that the legal defense fund wishes to advance, would not be permitted to participate in the CFC. (*Id.*) At the press conference, it was not announced that any specifically named organization would be allowed to participate in the CFC, or that any specifically named organization would not be allowed to participate in the CFC. (*Id.*) The purposes of Executive Order 12404, as described at the press conference, and in the memorandum dated February 2, 1983, from Defendant to Craig L. Fuller, are to state as the bases for the CFC those objectives listed in the Executive Order, and to provide language precise enough to implement these objectives. (Id.; Affidavit of Charles Stephen Ralston, Ex. K.) The

memorandum from Defendant to Craig L. Fuller states that under existing CFC eligibility criteria, the NAACP Legal Defense Fund had been a CFC participant. (Affidavit of Charles Stephen Ralston, Ex. K, p. 4). The memorandum does not state that the new Executive Order will permit the exclusion of legal defense funds; rather, the memorandum quotes the language of the Executive Order which would exclude from CFC eligibility, "Agencies which seek to influence the outcomes of elections on the determination of public policy through political activity or advocacy, lobbying, or litigation on behalf of parties other than themselves." (Affidavit of Charles Stephen Ralston, Ex. K, pp. 5-6.). The results sought to be achieved by the new Executive Order, are those stated in it. (48 Fed. Reg. 6685 (Feb. 15, 1983).)

5. The press release makes it clear that Executive Order 12404, "was motivated by the deep conviction of this Administration that private sector contributions to the essential safety net should be encouraged and supported, and that it is unfair and unjust to have the Federal Government using its resources to promote any political or advocacy group." (Affidavit of Joseph A. Morris, Ex. 1.) The participation of some organizations in the past had resulted in controversy and threatened boycotts of the campaign. (Affidavit of Phyllis McClure, Ex. A; Supplemental Affidavit of P. Kent Bailey.) These organizations were not limited to the National Right to Work Legal Defense Foundation, Inc., but included any non-health and welfare organization. (*Id.*) The harm to the CFC from the participation of these organizations was largely averted in the last Campaign by assurances from OPM that changes to the CFC's eligibility standards would be forthcoming, and by the extraordinary efforts of CFC volunteers. (Supplemental Affidavit of P. Kent Bailey; Affidavit of Phyllis McClure, Ex. A.).

6. On September 8, 1982, the Executive Committee, Board of Governors, United Way of America, approved and adopted a resolution in which United Way of America reaffirmed its support for limiting eligibility for the CFC to charitable agencies providing direct, human-care services in the fields of health and welfare, and urged the President

of the United States to clarify and amend Executive Order 12353 to reflect such limitations. (Affidavit of Charles Stephen Ralston, Ex. H.)

7. Preliminary information from the larger of the 550 CFCs on the results of their fall 1982 campaigns indicate that total contributions increased approximately 6.6 percent. (Supplemental Affidavit of P. Kent Bailey.) This information also indicates that the rate of participation on the part of Federal employees and members of the Armed Forces (*i.e.*, the percentage of personnel making contributions) decreased by approximately 1.1 percent. (*Id.*) Information available for the 25 largest CFCs indicates that the participation rate declined in 13 of these, increased in 7, and did not change in one (*Id.*).

8. The continued inclusion in the CFC of organizations which seek to influence the determination of public policy through political advocacy or litigation on behalf of parties other than themselves will cause some present CFC contributors to stop contributing to any organizations through the CFC. (Affidavit of P. Kent Bailey; Supplemental Affidavit of P. Kent Bailey; Affidavit of Phyllis McClure, Ex. A.).

9. Executive Order 12404 itself, the documents which reflect its genesis, and the announcements to the press regarding the Executive Order all make it clear that the precision provided in the Order responds to this Court's decision that prior CFC eligibility criteria had been unduly vague, and this Court's admonishment that, "It behooves the government officials responsible for the program to reexamine the basic premises on which the program was established so that more acceptable standards can be developed which will assure continuation of the government's significant and useful support for worthy charitable solicitation." (504 F. Supp. at 1369; 48 *Fed. Reg.* 6685 (Feb. 15, 1983); Affidavit of Charles Stephen Ralston, Ex. B, D, E, and K; Affidavit of Joseph A. Morris; Statement of Donald J. Devine, Attachment C to Defendant's Motion to Dismiss.).

10. The line which would be drawn under Executive Order 12404 between legal aid societies and legal defense

funds is that the former makes its services available to individuals solely on the basis of their financial need, without distinguishing the basis of a particular cause, while the latter are selective of clients on the basis of whether or not they have a cause, claim, or defense that they wish to advance. (Affidavit of Joseph A. Morris.) This distinction has not previously been set forth in CFC guidelines or regulations, and was found by Judge Gesell in his memorandum opinion and order dated January 19, 1981, to have been set forth only in rejection letters and, having been used in that context alone, to have comprised only an "analogy" to explain which type of organization would meet the "direct services" criteria formerly set forth in Section 5.21 of the CFC *Manual*. (504 F. Supp. at 1367.)

11. At the press conference, OPM's General Counsel stated that he would be surprised if the NAACP Special Contribution Fund did not meet the new eligibility criteria for the CFC, but he did not announce that the NAACP Special Contribution Fund would be admitted to the CFC. (Affidavit of Joseph A. Morris.) In its memorandum opinion and order dated January 19, 1981, the Court found the NAACP Special Contribution Fund to be "the most closely analogous organization (to plaintiffs) permitted to join the CFC." (504 F. Supp. at 1367-68, fn. 3.) The Court found as follows with respect to an assertion in that case that the "direct services" criteria in Section 5.21 of the CFC Manual could be measured based on mathematical analysis of an organization's budget:

> First, it is clear from the evidence that this analysis constitutes nothing more than a *post hoc* rationalization by defendant constructed especially for this litigation. Second, and more important, it is unclear how defendant proposes to screen the budget for each organization to be certain that comparable figures are derived. Third, the Supreme Court just last Term struck down a similar percentage based restraint in *Village of Schaumburg* v. *Citizens for a Better Environment.*

504 F. Supp. at 1360.

12. Executive Order 12404 distinguishes between "voluntary, charitable, health and welfare agencies that pro-

vide welfare services to individuals or their families" and "(a)gencies that seek to influence the outcomes of elections or the determination of public policy through political activity or advocacy, lobbying, or litigation on behalf of parties other than themselves." (48 *Fed. Reg.* 6685 (Feb. 15, 1983).) In its memorandum opinion and order dated January 19, 1981, the Court did not determine whether or not plaintiffs NAACP Legal Defense and Educational Fund, Inc., and Puerto Rican Legal Defense and Education Fund, Inc., met the "direct services" requirement then set forth in Section 5.21 of the CFC *Manual*. What the Court determined—"and all that it ... determined"—is that the "direct services" requirement as it was then employed did "not have the precision necessary to comport with constitutional requirements." 504 F. Supp. at 1368. Indeed, because of the vagueness which Judge Gesell found the *Manual's* direct services requirement to have suffered from, he could not have applied that requirement to those applications. Whether plaintiffs will meet the participation requirements of Executive Order 12404 and the implementing regulations must, of course, await promulgation of final regulations and assessment of each of the plaintiffs' applications in light of the Executive Order and the implementing regulations.

13. In its Order denying plaintiff's motion for a preliminary injunction, this Court has already ruled that plaintiffs have not demonstrated that they will sustain the immediate and irreparable harm they allege will occur if they are not at this time found eligible to participate in the fall 1983 CFC. In the Court's memorandum opinion and order dated January 19, 1981, plaintiffs' request for a disbursement from the 1981 CFC receipts to compensate them for their wrongful exclusion from the 1980 CFC was denied because plaintiffs had never before participated in the CFC and therefore could present no factual basis on which a reasonable sum could be determined; and, in any event, such an award did not appear to be appropriate or equitable under the facts of the case, given that there was a genuine dispute as to the eligibility of the plaintiffs for the CFC and that there already were vested interests by other groups in the receipts. (504 F. Supp. at 1369.)

14. The *status quo* is that no organizations have been accepted to participate in the fall 1983 CFC, since no applications have been ruled upon. (Supplemental Affidavit of P. Kent Bailey.) Requiring plaintiffs' applications to be decided will dramatically alter that *status quo*.

15. Defendant has been warned by CFC contributors, CFC workers, federal employee unions, and members of Congress, that continued inclusion in the CFC of non-health and welfare organizations will result in diminished support for the Campaign. (Affidavit of P. Kent Bailey; Supplemental Affidavit of P. Kent Bailey; affidavit of Phyllis McClure, Ex. A.) The participation rate in many campaigns has already declined. (Supplemental Affidavit of P. Kent Bailey.) Boycotts of the fall 1982 CFC occurred at some localities. (Supplemental Affidavit of P. Kent Bailey, Attachment A.) As evidenced by many of the submissions protesting the inclusion of non-health and welfare agencies in the CFC, the threat of these boycotts spreading is very real. (*Id.*) The President and Director Devine have reasonably concluded that some response to these concerns and threats is necessary in order to preserve the purposes of the CFC of meeting human health and welfare needs. *See* Executive Order 12404; Attachment C to Defendant's Motion to Dismiss (Devine testimony).

Respectfully submitted,

STANLEY S. HARRIS
United States Attorney

ROYCE C. LAMBERTH
Assistant United States Attorney

JOHN D. BATES
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-0928

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., ET AL., PLAINTIFFS,

v.

HONORABLE DONALD J. DEVINE, DIRECTOR, UNITED STATES OFFICE OF PERSONNEL MANAGEMENT, DEFENDANT.

SUPPLEMENTAL AFFIDAVIT

P. Kent Bailey, being duly sworn, deposes and says:

1. I am the program analyst providing staff support to the Assistant to the Deputy Director for Regional Operations, United States Office of Personnel Management (OPM). The Office of the Assistant to the Deputy Director is the is the office with primary responsibility for support to the Director of OPM in the administration of the Combined Federal Campaign (CFC). The statements made herein are based upon personal knowledge obtained in the course of performing the official duties assigned to me.

2. Preliminary information from the larger of the 550 CFCs on the results of the domestic CFC conducted in the fall of 1982 indicate that total contributions increased approximately 6.6 percent. It also showed that the rate of participation on the part of Federal employees and members of the Armed Forces decreased by approximately 1.1 percent. Information on 21 of the 25 largest CFCs shows that the participation rate declined in 13, increased in seven, and did not change in one.

3. After the fall 1982 CFC OPM received numerous letters from CFC Chairpersons, Federal agency heads in the field, Federal employees and members of the Armed Forces, voluntary charitable organizations, union officials

and members of Congress protesting the inclusion in the CFC of what they considered "advocacy organizations" and asking that eligibility for participation in the CFC be limited to organizations that provide direct health and welfare services. Many of the CFC Chairpersons and Federal agency heads said that their fall 1982 campaigns succeeded only because of the extensive extra efforts made by them, other local CFC leaders and agency heads, and campaign workers. Many also warned that, based on feedback from Federal employees and members of the Armed Forces, contributions and participation in the fall 1983 and future CFCs is likely to diminish unless "advocacy organizations" are excluded from the CFC. Attachment A is a sample of the letters referred to above.

4. All seven plaintiffs in this action applied for and participated in the fall 1982 CFC. All but two, the Lawyers' Committee for Civil Rights Under Law and the Sierra Club Legal Defense Fund, did so in the fall 1981 CFC.

5. No decisions have been made of applicants for participation in the fall 1983 CFC as of this date.

/s/ P. Kent Bailey
P. KENT BAILEY

Sworn to and subscribed before me this 18th day of May, 1983, in the City of Washington, District of Columbia.

/s/ Helen B. Welch
HELEN B. WELCH
Notary Public

My Commission expires: 3-31-87

Attachment A

DEPARTMENT OF THE ARMY
HQ, US ARMY AVIATION RESEARCH AND
DEVELOPMENT COMMAND
4300 GOODFELLOW BOULEVARD,
ST. LOUIS, MO 63120

November 22, 1982

Mr. Donald J. Devine
Director
Office of Personnel Management
1900 E Street NW
Washington, DC 20415

Dear Mr. Devine:

The US Army Aviation Research and Development Command (AVRADCOM) remains an enthusiastic supporter and consistent contributor to the Combined Federal Campaign (CFC). Since the Command's establishment in 1977, our CFC monetary goals have been met each year and many AVRADCOM employees provide volunteer services to various CFC agencies in addition to their financial contributions.

Although this year's campaign was successful in reaching the goal established, the percentage of employee participation slipped considerably. While participation rates have shown a downward trend over time, I am concerned that this year's significant drop may be the direct result of the noncharitable organizations added to the 1982 CFC.

This year's campaign included a large number of private, nonprofit agencies whose activities involve advocacy and activism rather than the traditional charitable objectives. For this reason, many employees chose not to contribute. The fact that personnel can designate specific agencies to receive their donations offers little consolation to potential contributors who strongly oppose the purposes of these noncharitable agencies.

Other executives, both within and outside the Federal sector, share the concerns this letter conveys. A policy review of the decision to permit other than charitable organizations to benefit from CFC operations should be seriously

considered. Without a reexamination of today's policy, the potential exists to seriously damage future CFC efforts.

Please let me know if I can be of any assistance in working toward regaining the positive attitude needed to encourage greater participation in future CFC efforts.

Sincerely,

/s/ Story C. Stevens
STORY C. STEVENS
Major General, USA
Commanding

Cy Furn:
Mr. Clarence Squellati, Chairman
1982 East-West Gateway CFC
Mr. Sidney Ford, Chairman, Federal Executive Board,
St. Louis, MO
General Donald R. Keith, Commander, DARCOM
Mr. Gerald Hinch, Regional Director,
Office of Personnel Management

SOUTH FLORIDA AFL-CIO

January 13, 1983

Received January 18, 1983
Office of the Director

Donald J. Devine, Director
Office of Personnel Management
900 E St
Washington, DC 20415

With discussions underway regarding problems encountered in the 1982 combined federal campaign, I would like to express strong disagreement with OPM's decision to include controversial non health and welfare services as eligible agencies to participate in local combined federal campaigns. The inclusion of those agencies brought about considerable fragmentation in the Dade County community which resulted in losses of some $172,000 for legitimate health and welfare services.

The impact of such losses are devastating, especially during a period of economic recession and federal funding cut backs for these services. Such actions destroy local initiatives to increase charitable contributions for needed health and welfare services. I urge you to reconsider this decision and restrict the CFC effort to health and welfare services only.

E T STEPHENSON
President of South Florida
AFL-CIO

UNITED STATES POSTAL SERVICE

November 22, 1982

Received November 26, 1982
Office of the Director

Mr. Donald J. Devine
Director, United States Office of
Personnel Management
Washington, D.C. 20415

Dear Mr. Devine:

For many years past I have worked with local Combined Federal Campaigns in Alabama, Arkansas, Louisiana, Mississippi, and Tennessee. I have served as Chairman in Alabama and Arkansas and now Mississippi and while this year has been interesting, both I and members of our Local Combined Federal Coordinating Committee were infected with a feeling of frustration and a lessened sense of satisfaction. We felt that far too many groups were allowed to participate in the Combined Federal Campaign.

It is my request that you influence more in the selection of participating groups and attempt to reduce or eliminate the number of social and political agencies.

As the list grows longer, confidence in the integrity of the Combined Federal Campaign wans.

Sincerely,

/s/ W. G. Smith

W. G. SMITH
Sectional Center Manager/
Postmaster
Jackson, Mississippi 39205-9998

DEFENSE MAPPING AGENCY
AEROSPACE CENTER
ST LOUIS AIR FORCE STATION, MISSOURI 63118

19 January 1983

Received Jan. 24, 1983
Office of the Director

Dr. Donald J. Devine
Director
Office of Personnel Management
Washington, D.C. 20415

Dear Dr. Devine:

As the Director of the Defense Mapping Agency Aerospace Center in St. Louis, Missouri, I have been greatly involved in both the 1981 and 1982 Combined Federal Campaigns. During this past two, I have observed an erosion of trust and credibility concerning the goals and purposes of the CFC.

The introduction of political advocacy groups to the list of deserving health and welfare agencies, seriously undermines the years of dedicated support that our employees have always openly displayed. This past year this Center for the first time did not make its established goal. This goal was 12 percent higher than 1981 and only 95 percent of it was achieved. Key workers, torch-lighters, loaned executives, and project officers related essentially the same story. Although such reasons as, "only a 4 percent federal pay raise last October," or "economic conditions" were offered as negative affects, the singularly distinctive reason that came out most of all was our employees dislike for the inclusion of politically oriented groups that support social issues of abortion, busing, and right to work. Although they are recognized as serious and controversial social problems, we see no reason for their inclusion in a health and welfare campaign.

As much as we talked and explained the use of designating contributions to the agency of your choice, there is an inherent belief that the monies in the undesignated pool are divided up so that all listed agencies receive some share of the pie. Therefore, it makes no difference if an employee

designates his own money to a certain cause, there will be political groups on the list of eligible agencies that will still benefit from his overall support of the CFC (what they don't get by specific designation they will get from the undesignated pool).

Local pressure groups picket outside this Center and distribute flyers listing those CFC agencies that support busing, abortion, etc., and ask the federal employees not to contribute to the CFC.

For many years, this Center has voluntarily supported the CFC in an enthusiastic and dedicated manner. However, I have grave concerns on the present direction of the CFC and its list of qualifying recipients. The growing resentment against the change in character of the CFC will lead to less and less support of the CFC each year and eventually to its collapse as a worthwhile nationwide program in support of the truly needy of this nation.

Sincerely,

/s/ J. W. Small

J. W. SMALL
Colonel, USAF
Director

GREATER CINCINNATI
FEDERAL EXECUTIVE BOARD
9526 FEDERAL OFFICE BUILDING
550 MAIN STREET
CINCINNATI, OHIO 45202

January 12, 1983

Received Jan. 14, 1983
Office of the Director

Honorable Donald J. Devine
Director
U.S. Office of Personnel Management
1900 E Street, N.W.
Washington, D.C. 20415

Dear Dr. Devine:

The purpose of this letter is to call to your attention our growing concern over the future of the Combined Federal Campaign of the Cincinnati Metropolitan Area.

For years the Internal Revenue Service and the U.S. Postal Service Bulk Mail Center have led the way in our local CFC. This year, neither reached their CFC goals. In both cases, failure to reach goal was due primarily to various union activities in response to OPM's decision to allow the Right to Work Legal Defense Fund to participate in CFC. It is our understanding that full-fledged union boycotts could occur throughout our entire CFC this fall if such organizations as Right to Work are allowed to continue to participate in CFC.

We in Cincinnati are still quite proud of our CFC achievements in the Fall 1982 Campaign. Even with the problems mentioned above, we were able to reach our overall dollar goal. Making goal, however, was due primarily to the inordinate amount of official time and effort put into the Campaign by everyone concerned. The Federal Government can no longer afford to do this!

We in Cincinnati are already expeiencing difficulty getting Federal executives to volunteer for leadership roles for the Fall 1983 CFC. No one really wants to chair the overall Campaign. It has evolved into a thankless, time-consuming and frustrating endeavor. In addition, as Federal budgets and personnel continue to be reduced, local Federal executives will be unable to allow their remaining resources to be dissipated in non-mission activities like CFC.

What we really need is a return to the basics for which CFC was created. Then, and only then, can there be unity of purpose: To raise voluntary contributions for the truly needy at a minimum of cost to the Federal sector. In this regard, we strongly recommend that the CFC Executive Order and Regulations be revised to restrict participation in CFC to traditional health and/or welfare agencies only.

Sincerely,

/s/ San Juan C. Romero
SAN JUAN C. ROMERO
Chairman

cc: Mr. Carey, OPM Chicago

WESTERN UNION TELEGRAM

January 11, 1983—PM 7:29

Received January 12, 1983
Office of the Director

Donald J. Devine, Director
OPM RPT DLY MGM, DLR
900 E ST, NW
Washington, DC 20415

The highly emotional reaction to OPM's forcible inclusion of non health and welfare agencies in CFC this year nearly caused a disaster in both United Way and CFC campaigns in our community. If this situation is not corrected I foresee a serious rupture which may take a decade or more to heal. I urge your immediate action on this crucial issue.

ROBERT REEDS,
Executive Secy Treasurer
Greater Kansas City Missouri Labor Council AFL-CIO
6301 Rockhill Rd.
Kansas City, MO 64131

UNITED STATES DEPARTMENT OF AGRICULTURE
LAKEWOOD, CO 80225

January 31, 1983

Received February 3, 1983
Office of the Director

Dr. Donald J. Devine
Director, U.S. Office of Personnel Management
1900 E Street, NW
Washington, DC 20415

Dear Dr. Devine:

With the 1983 Combined Federal Campaign now closed within our organization, we need to share some concerns with you.

Several entities, which are viewed by a growing number of our employees as inappropriate, have been added to the list of participating agencies. This belief has developed because the organizations are seen as self serving special interest advocacy groups rather than charitable, community oriented public help organizations.

You need to be aware that a significant number of our employees refused to join in the Combined Federal Campaign this year. This was a direct reaction to the types of organizations that were permitted to be included under present policy.

You are encouraged to establish eligibility policy that includes only health and welfare groups and excludes advocacy groups.

Your help can have a direct result on the success of future campaigns.

Sincerely,

/s/ Craig W. Rupp
CRAIG W. RUPP
Regional Forester

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE ACCOUNTING AND FINANCE CENTER
DENVER, CO 80279

January 27, 1983

Received February 1, 1983
Office of the Director

SUBJECT: Combined Federal Campaign

TO: Dr. Donald J. Devine
Director, U.S. Office of Personnel Management

1. The 1982 Denver Metropolitan Area Combined Federal Campaign was a definite success. However, we did receive complaints because of the inclusion of other than traditional health and welfare organizations.

2. We feel that the strong support from the American Federation of Government Employees (AFGE) was a key factor to our success. There is the promise that the AFGE will boycott the 1983 campaign if the National Right to Work Legal Defense and Education Foundation, Inc., is included again. We also feel that the same should apply to any advocacy group, the CFC should not provide a forum for political groups.

3. As a final item, there is still the impression that designated contributions do not go to the designated agency. This year's publicity might emphasize this point further. These suggestions are offered to further improve an already excellent program.

/s/ D. Lynn Rans
D. LYNN RANS,
Brigadier General, USAF
Commander

WESTERN UNION TELEGRAM

January 11, 1983—PM 4:31

Received January 12, 1983
Office of the Director

Donald J. Devine, Director, DLR
Office of Personnel Management RPT DLY MGM
900 E St. NW
Washington, DC 20415

The United Way of San Diego County is deeply concerned that the recent inclusion of non health and welfare organizations into the Combined Federal Campaign has significantly impacted the United Way share of our local CFC. While our LFCC has not officially declared our campaign results the projections for the United Way share of the 1982 drive is $582,000 less than last year a loss of 25 percent. At least ½ of this amount is attributable to the inclusion of these agencies. This will significantly impact our local United Way's ability to fund our 84 member agencies at a level commensurate with their needs. We strongly urge the White House and the Office of Personnel Management to re-examine non health and welfare agencies in light of the erosion of the quality of human care services and programs.

R. E. MORRIS, President
United Way of San Diego County
PO Box 17720
San Diego, CA 92117

WESTERN UNION MAILGRAM

January 10, 1983

Received January 18, 1983
Office of the Director

Donald J. Devine, Director
Office of Personnel Mgmt
900 E St. NW
Washington, DC 20004

Bernalillo County AFL-CIO urges change in CFC rules to eliminate non-health and welfare organizatons. Union members boycotted 1982 campaign over this issue. We fear further harm to voluntary efforts in 1983 campaign if changes not made.

LORRAINE MILLER, President
AFL-CIO Central Labor Counsel
Board Member Albuquerque United Way

WESTERN UNION MAILGRAM

January 11, 1983

Received January 12, 1983
Office of the Director

Donald J. Devine, Director
Office of Personnel Management
900 E St. Northwest
Washington, DC 20415

The labor community in the Seattle King County Area does not and will not support the inclusion of non-health and welfare agencies and organizations in the Combined Federal Campaign (CFC). Boycotts will again flourish in upcoming CFC and United Way Campaigns if advocacy and other politically oriented organizations are included at the further expense of local health and welfare agencies and organizations. We urge you to only include health and welfare organizations in the CFC.

JACK LAWSON, Secretary
Communications Workers of America
Member, PNB,
King County and Washington State
United Way Drive

DEPARTMENT OF THE ARMY
HQ, US Army Troop Support & Aviation
Materiel Readiness Command
4300 Goodfellow Boulevard, St. Louis, MO 63120
January 18, 1983

Received January 21, 1983

Directorate for Personnel, Training
and Force Development

Mr. Donald J. Devine
Director, Office of Personnel Management
1900 E. Street N.W.
Washington, D.C. 20415

Dear Mr. Devine:

The US Army Troop Support and Aviation Materiel Readiness Command (TSARCOM) remains an enthusiastic supporter and consistent contributor to the Combined Federal Campaign (CFC). Since the Command's establishment in 1977, our CFC monetary goals have been met each year and many TSARCOM employees provide volunteer services to various CFC agencies in addition to their financial contributions.

Although last year's campaign was successful in reaching the goal established, the percentage of employee participation slipped considerably. While participation rates have shown a downward trend over time, my concern centers on the idea that last year's significant drop in partcipation directly results from the noncharitable organizations added to the 1982 CFC.

Last year's campaign include a large number of private, nonprofit agencies whose activities involve advocacy and activism rather than the traditional charitable objectives. For this reason, many employees chose not to contribute. The fact that personnel can designate specific agencies to receive their donations offers little consolation to potential contributors who strongly oppose the purposes of these noncharitable agencies.

Other executives, both within and outside the Federal sector, share the concerns this letter conveys. A policy review of the decision to permit other than charitable organizations to benefit from CFC operations should be seriously considered. Without a reexamination of today's policy, the potential exists to seriously damage future CFC efforts.

Please let me know of any assistance required to work toward regaining the positive attitude needed to encourage greater participation in future CFC efforts.

Sincerely,

/s/ _____
EMIL L. KONOPNICKI
Major General, U.S. Army
Commander

Cy Furn:
Mr. Clarence Squellati, Chairman 1982 East-West Gateway CFC
Mr. Sidney Ford, Chairman, Federal Executive Board, St. Louis, MO
Mr. Gerald Hinch, Regional Director, Office of Personnel Management

WESTERN UNION MAILGRAM
Local 290 Boilermakers Union
PO Box 488
Bremerton WA 98310
January 11, 1983

Received January 12, 1983

David Divine Director of Office of Personnel
900 E St Northwest
Washington DC 20415

Our 1983 CFC experienced a 20 percent drop in contributions as compared to 1982. This was largely because inclusion of advocacy groups provided a considerable obstacle to support by labor community. You should realize that our local health and social welfare agencies were seriously harmed and will continue to suffer if the CFS persists in mixing advocacys groups with our truly charitable agencies.

W K Holt Boilermakers Union Local 290

DAN J. GOULD BRANCH NO. 343
National Association of Letter Carriers
Affiliated with AFL-CIO and
St. Louis and Missouri State Labor Councils
January 17, 1983

Received January 19, 1983

Mr. Donald J. Devine, Director
Office of Personnel Management
Washington, D.C. 20415

Dear Mr. Devine:

I am writing to express my concern for the continued effectiveness of the Combined Federal Campaign. This past year, due to actions initiated by yourself, the inclusion of the Right-To-Work Legal Defense Fund had put the Combined Federal Campaign in an almost uncompromising position. Due to the common sense approach and the ability of the people in the St. Louis area to work together, this particular obstacle was overcome.

I am writing because I do not see the continued effectiveness, of the C.F.C. if organizations and agencies such as the Right-To-Work Legal Defense Fund are allowed to be recipients of contributions that should be earmarked for charitable organizations. The Right-To-Work Legal Defense Fund is not charitable, and organizations such as this have no business being included as a recipient of the C.F.C. funds.

I certainly do not want to see the demise of the C.F.C. which has done so much to help people in need, but if the C.F.C. is not handled properly and does not concern itself with the intent and the purpose for which it was founded, the alternate result will be eventual destruction of the C.F.C. because people will no longer contribute.

I certainly hope you will take the appropriate actions.

Sincerely,

/s/ _____

JOHN HAAKE,
President
Branch 343, N.A.L.C.

WESTERN UNION TELEGRAM
January 10, 1983

Received January 11, 1983

Mr. Donald J Devine,
Director Office of Personnel Management
900 E Northwest
Washington, DC 10415

The National Association of Letter Carriers in the Seattle King County area does not and will not support the inclusion of non-health and welfare agencies and organizations in the combined federal campaign (CFC).

Boycotts will again flourish in upcoming CFC and United Way Campaign if advocacy and other politically oriented organizations are included at the further expense of local health and welfare agencies and organizations. We urge you to modify the regulations accordingly.

William R. Guiberson, President, National Association of Letter Carriers, Branch 79 (107 Cherry St Seattle WA 98104)
107 Cherry St
Seattle WA 98104

PORTLAND FEDERAL EXECUTIVE BOARD
1776 Federal Building
1220 S.W. Third Avenue
Portland, Oregon 97204
(503) 221-3010

January 18, 1983

Dr. Donald J. Devine, Jr.
Director, Office of Personnel
Management
1900 E Street, N.W.
Washington, D.C. 20415

Subject: Combined Federal Campaign

Dear Dr. Devine:

As Chairman of the CFC for the Portland, Oregon area, I am writing you regarding the issues that need addressing to alleviate the concerns that created major problems in conducting the 1982-83 CFC. These concerns were brought about by the ruling in OPM Letter 950-1.

The loss of local control of the CFC caused major concern to the Portland Federal Executive Board and the Federal employees in this area. The overriding of local decisions not to allow political action and special interest groups of this type to be recipients of voluntary contributions by the OPM has in effect made it impossible for local contributors to feel they are a part of resolving the needs of local people.

Many contributors do not like the requirement of having to designate the agency to receive their contributions. The concern is that many very worthy agencies will be left without resources for charitable fund raising and fund distribution to recipient agencies. The feeling is, with United Way the PCFO, the designation would be unnecessary if only health and welfare agencies were to be the recipients of contributions.

The eligibility of political action and special interest groups of this type created much opposition to this year's CFC. This related to loss of local control. The agencies identified as causing the greatest concern are:

1. The National Right to Life Educational Foundation

2. Vietnam Veterans of America Foundation
3. National Council of Negro Women, Inc.
4. The NOW Legal Defense and Education Fund
5. Conservative Legal Defense and Education Fund
6. National Right to Work Legal Defense Foundation, Inc.
7. Planned Parenthood Association
8. Sierra Club Legal Defense Fund, Inc.
9. Natural Resources Defense Council
10. World Wildlife Fund—U.S.

I will quote you a sentence from one letter that I received:

"Unless constructive changes are made by the Office of Personnel Management, the chances of organized labor amassing in boycott for next year's campaign is a logical conclusion."

I believe this pretty well sums up the attitude of most Federal employees in this area, even though most are not members of organized labor.

My suggestion to you is that you need to initiate major changes in current OPM rules or next year the CFC will be hard pressed to solicit voluntary funds.

The results of the CFC in this area supports that Federal employees are concerned with the well being of those people that are in need of health and welfare assistance. They feel that it is of utmost importance that OPM revise or eliminate 950-1 so as to allow this program to operate as a local program.

This year, there was approximately 11,550 hours used by Federal employees in soliciting and managing the Portland area CFC. This is approximately 25% greater use of Federal resources than in the past and was primarily due to the necessity of explaining the OPM rules and trying to convince the contributors they should continue to support the CFC.

It is the desire of the Portland FEB that you initiate action to have major revisions made to the OPM rules contained in FPM Letter 950-1, particularly the rules relating to local eligibility decisions.

Sincerely yours,

/s/ _____

M. ELDON GREEN,
Chairman
Combined Federal Campaign—
Portland, Oregon

FEDERAL EXECUTIVE BOARD
OF GREATER ST. LOUIS, MISSOURI
Staff Office, Room 2025
1520 Market Street, St. Louis, Missouri 63103-2682

January 12, 1983

Received January 18, 1983
Office of the Director

Dr. Donald Devine
Director
Office of Personnel Management
1900 "E" Street, N.W.
Washington, D.C. 20415

Dear Dr. Devine:

The 1982 East-West Gateway CFC raised $1,326,000 which exceeded the 1981 total by $39,000 even though participation declined by approximately four percent.

From the onset it became apparent that this year's drive would be very difficult, especially after 1981's problems with the National Association of Neighborhood Schools (NANS). This year NANS again picketed the Federal Buildings; however, after a meeting with their chairman and the CFC chairman they agreed to stop picketing and passing out the handbills. They are still adamant and will no doubt be active next year. The threat of boycott by unions was real. Only by hard work were we able to gain their outward support, but many of the rank and file members still reacted negatively.

The steering away from the traditional health and welfare groups could spell the demise of the CFC as we have grown to know it. The loaned executives and key persons must at times face groups of employees who are staunch union members and they must overcome a negative attitude caused by CFC inclusion of advocacy groups.

To be ultimately successful in a general fund drive, all agencies must be noncontroversial. When advocacy groups or groups that stir up negative feelings because of religious

or union affiliation are present, we place an undue stumbling block in the path of many potential givers.

There is a growing concern on the part of Federal officials that if the CFC does not remove many of the controversial organizations, dire results will occur. Many people are looking for a chink in the CFC armor, and it appears that by including advocacy groups we play into their hands; and we provide the "I'll give at home" individual the excuse for not participating. We strongly urge the OPM exert maximum efforts to exclude "all" advocacy groups from the 1983 program.

Sincerely,

/s/ _____
SIDNEY M. FORD
Chairman

ENCLOSURE

WESTERN UNION MAILGRAM
January 11, 1983

Received January 12, 1983
Office of the Director

Donald J Devine
Director Office of Personnel Management
900 E St Northwest
Washington DC 20415

The labor community in the Seattle King County area does not support the inclusion of non health and welfare agencies and organizations in the Combined Federal Campaign (CFC). Boycotts will again flourish in upcoming CFC and United Way Campaigns if advocacy and other politically oriented organizations are included at the further expense of local health and welfare agencies and organizations. As General Campaign Chairman I urge you to modify the regulations accordingly.

WESTERN UNION MAILGRAM
January 11, 1983

Received January 12, 1983
Office of the Director

Donald J. Devine
Director Office of Personnel Management
900 E St Northwest
Washington DC 20415

The inclusion of advocacy and politically oriented organizations in the Combined Federal Campaign (CFC) has created a road block in charitable contributions from union members in the Seattle King County area, unless these groups are removed from the CFC list, health and welfare organizations will continue to feel the severe impact of the labor community's boycott of these campaigns. As president of United Way of King County I urge you to only include health and welfare organizations in the Combined Federal Campaign.

John D Durbin
President Cummins Northwest Diesel, Inc
PO Box 9811
Renton WA 98057

FEDERAL EXECUTIVE BOARD
Buffalo
January 25, 1983

Mr. Joseph A. Morris
General Counsel
Office of Personnel Management
Washington, D.C. 20415

Dear Mr. Morris:

The Buffalo Federal Executive Board would like to register its concern over the admittance of advocacy groups into the Combined Federal Campaign.

In the Buffalo area most of our government work forces are unionized; and most of these groups are expected to take strong opposition to the inclusion of certain advocacy groups. Whereas we were able to deal effectively with this situation in 1982, we have heard that it will likely become a rather prominent issue in 1983.

Although we are hopeful that the campaign will receive total support from our government unions, lack of such support could be devastating to the results of our campaign.

Sincerely,

/s/ _____
MICHAEL R. DALY, MAJOR, USAF
Chairman
Federal Executive Board

UNITED STATES POST OFFICE
Atlanta Sectional Center
Atlanta, GA 30304-9998
January 18, 1983

Received January 20, 1983
Office of the Director

Dr. Donald J. Devine
Director, OPM
1900 "E" Street
Washington, DC 20415

Dear Dr. Devine:

My CFC Coordinator, who has served in that capacity since 1972, tells me the 1983 Combined Federal Campaign was the most difficult campaign of the past ten years.

The campaign just completed required more time and more energy than any campaign to date. Why? Because the CFC, under the auspices of OPM, has become a financial jackpot for any quasi-legitimate organization that (a) applies, (b) establishes a local office, and/or (c) sets up a toll-free telephone number.

We have gotten so far away from the "human services and needs" concept of the CFC that generous long term contributors have decided that they will send a monetary gift to the organization or charity of their choice rather than taking a chance on some "Right-to-Work-Committee" getting a slice of the CFC pie.

You are aware of the on-again, off-again boycott by the National Association of Letter Carriers (NALC) at the outset of the 1983 Campaign. Even though that boycott was officially lifted by the local NALC president, you must be aware, also, of the confusion and uncertainty among the membership of the NALC and the negative impact these factors had on the contributor and the amount of his contribution.

For the first time in 10 years the Metropolitan Atlanta Postal Family failed to reach its CFC goal. We attribute this shortfall in contributions and contributors to the "open

door" policy of OPM. And unless OPM reverses its posture with regard to CFC, we will experience a steady deterioration in contributions.

Dr. Devine, postal and federal employees are both compassionate and generous to those less fortunate than ourselves, but be assured that neither the group nor the adjectives can be taken for granted.

Sincerely,

/s/ _____

RICHARD I. CARLETON
Sectional Center Manager/
Postmaster
Atlanta, GA 30304-9998

COMMANDING OFFICER
Naval Air Station
Dallas, Texas 75211
January 16, 1983

Doctor Donald Devine
Director
Office of Personnel Management
1900 E Street, NW
Washington, DC 20415

Dear Doctor Devine,

The purpose of this letter is to provide you with a reflection of opinion at the Naval Air Station, Dallas, Texas, concerning the scope and nature of Combined Federal Campaign disbursements. The letter is submitted at the request of the Dallas-Fort Worth Federal Executive Board, and does not necessarily represent an official position of either the Department of the Navy or the Department of Defense. Rather, it is an expression of personal preference on the part of military personnel and civilian employees who contribute to the Combined Federal Campaign.

The basic question presented to Combined Federal Campaign contributors was: "Should Combined Federal Campaign disbursements include health and welfare agencies only, or should they also include certified advocacy organizations such as the Sierra Club, various right-to-work groups, and equal rights groups?" Over-whelmingly, the personnel of the Naval Air Station, Dallas, favor restricting Combined Federal Campaign disbursements to health and welfare organizations only. This opinion encompasses members of a local lodge of the American Federation of Government Employees.

Sincerely,

/s/ _____

C. G. ANDRES
Captain, U.S. Navy

Copy to:
DFW Federal Executive Board

DENVER FEDERAL EXECUTIVE BOARD
Building 41,
Denver Federal Center
Denver, Colorado 80225
Telephone: (303) 234-6704
January 12, 1983

Dr. Donald J. Devine
Director
U.S. Office of Personnel Management
1900 E Street, NW
Washington, DC 20415

Dear Dr. Devine:

The 1982 Denver Metropolitan Area Combined Federal Campaign was a success. However, we had many complaints from agencies, unions, employee groups and individuals because of the inclusion of other than traditional health and welfare organizations in the Campaign. The main reason for our success in 1982 can be attributed to the super efforts by our loaned executives, agency chairmen, agency heads, union leaders and others involved.

The strong support we had from the American Federation of Government Employees (AFGE) was also very important to our success. We do have a promise of a boycott of the 1983 Campaign if the National Right to Work Legal Defense and Education Foundation, Inc., is included again. Two smaller unions did boycott the 1982 Campaign because of their inclusion. If AFGE carries through on their promise, and I have every reason to believe they will, all Federal government employee unions will follow suit and the 1983 Campaign will fail miserably.

I understand that the Office of Personnel Management is currently working on new CFC regulations. If Campaigns are to succeed in 1983, we desperately need to assure CFC funds are limited to traditional health and welfare groups and that advocacy groups are excluded. I would like to strongly encourage OPM to establish such eligibility parameters in the new regulations.

I would also like to encourage early publication of the regulations. Because of the lead time necessary for the

printing and other preparations for an October Campaign, regulations are necessary no later than May 1, 1983.

Sincerely,

/s/ _____
NORMAN ALVERSON
Chairman

DEPARTMENT OF HEALTH & HUMAN SERVICES
Office of the Regional Director
Region VIII
Federal Office Building
1961 Stout Street
Denver CO 80294
January 20, 1983

Dr. Donald J. Devine
Director, U.S. Office of
Personnel Management
1900 E Street, N.W.
Washington, D.C. 20415

Dear Dr. Devine:

I am writing to you in regard to how the Combined Federal Campaign is operated. I personally, along with many other federal employees, find it disatisfying that the Combined Federal Campaign has veared from helping traditional health and welfare groups and now includes many advocacy groups which have little or nothing to do with helping the needy. In addition, I do not feel that the mere fact an organization has a local presence, is cause to automatically be included in the campaign. Many groups have local presence, but traditionally do nothing in the field of health and welfare.

While we as agency heads are mandated to participate in the Combined Federal Campaign, promotion of the campaign would be easier if the situation mentioned above was considered.

As budgets dwindle, thereby causing reductions in personnel, it is vital that those employees who are left, take up the slack in contributions that would be lost by the truly needy and welfare groups.

Your consideration and attendion to this matter would be most appreciated.

Sincerely,

/s/ _____
PATRICK C. ALLISON
Regional Director

FAMILY TREE, INC.
7307 Grandview Avenue
Arvada, Colorado 80002
303 422-2133
February 2, 1983

Dr. Donald J. Devine, Director
Office of Personnel Management
1900 E. Street Northwest
Washington, D.C. 20145

Dear Dr. Devine,

As the Executive Director for Family Tree, I am deeply concerned that our ability to raise the needed funds to provide these services may be impaired by recent developments in the charitable campaign for federal employees. This concern is especially distressing at this time of high unemployment and ever increasing need for services. Here in Denver, there was over $130,000 less dollars raised for United Way agencies through the C.F.C. that could have been allocated for our critical human care services.

The recent decision to admit single purpose advocacy groups to the Combined Federal Campaign, the only charitable fund drive allowed on federal property, has endangered what has been a successful fund raising effort for our organization in the past. The admission of these organizations was *highly controversial* and has caused confusion and disenchantment with the campaign.

This disenchantment has already seriously impaired the ability of local principal combined fundraising organizations to raise funds to support direct services. A continuation will cause irreperable erosion of our fund raising efforts in the future. If continued, local estimates range from a 10% to 50% reduction in funding from federal employees in 1983. Many hard-hit communities are already cutting back in their allocations, while demand for the services by the needy is rising. Action must be taken to rectify this situation.

Therefore, we urge President Reagan to modify Executive Order 12353 by limiting eligibility in the Combined Federal Campaign to organizations that devote a substan-

tial portion of their expenditures to services in the health and welfare field.

President Kennedy launched the Combined Federal Campaign in 1961 to encourage federal employees to pledge money in support of voluntary health and welfare charities. The campaign was designed to complement the direct effort of the government itself to meet *basic human needs*. For 20 years the campaign operated successfully under this premise. Returning to President Kennedy's original intent for the Combined Federal Campaign is the best course of action. This return will achieve two important results. It will (1) encourage support of programs that are critical to the national interest because they provide for basic human needs; and (2) make ineligible for participation in the Combined Federal Campaign controversial single purpose advocacy groups. The present eligibility of these groups is resulting not only in loss of support from federal employees but also from those working Americans who provide most of the support to our agencies.

Sincerely,

/s/ _____

JUDY HUDSON-TRUJILLO
Executive Director

JHT/mb
cc: Rolland Hoffman

OFFICE OF THE DIRECTOR
JEWISH FAMILY AND CHILDREN'S
SERVICE OF COLORADO
Allied Jewish Federation Bldg.
300 So. Dahlia St. Suite 101
Denver, Colorado 80222-8198
February 3, 1983

Dr. Donald J. Devine, Director
Office of Personnel Management
1900 E. Street Northwest
Washington, D.C. 20145

Dear Dr. Devine:

As the Executive Director for Jewish Family and Children's Service of Colorado, I am deeply concerned that our ability to raise the needed funds to provide social services may be impaired by recent developments in the charitable campaign for federal employees. This concern is especially distressing at this time of high unemployment and ever increasing need for services. Here in Denver, more than $130,000 fewer dollars were raised for United Way agencies through the combined Federal Campaign which could have been allocated for our critical human care services.

The recent decision to admit single purpose advocacy groups to the Combined Federal Campaign, the only charitable fund drive allowed on federal property, has endangered what has been a successful fund raising effort for our organization in the past. The admission of these organizations was highly controversial and has caused confusion and disenchantment with the campaign.

This disenchantment has already seriously impaired the ability of local principal combined fund raising organizations to raise funds to support direct services. A continuation will cause irreparable erosion of our fund raising efforts in the future. If continued, local estimates range from a 10 percent to 50 percent reduction in funding from federal employees in 1983. *Many hard-hit communities have already been cut back in their allocations while demand by*

the needy for services is rising. Action must be taken to rectify this situation.

Therefore, we urge President Reagan to modify Executive Order 12353 by limiting eligibility in the Combined Federal Campaign to organizations that devote a substantial portion of their expenditures to services in the health and welfare field.

The Combined Federal Campaign was designed to complement the direct effort of the government itself to meet *basic human needs.* For 20 years the campaign operated successfully under this premise. Returning to the Campaign will achieve two important results; (1) Encourage support of programs that are critical to the national interest because they provide for basic human needs; (2) Make ineligible for participation in the Combined Federal Campaign controversial single purpose advocacy groups. The present eligibility of single purpose advocacy groups is resulting not only in loss of support from federal employees, but also from those working Americans who provide most of the support to our agencies.

Sincerely,

/s/ _____

JERRY GROSSFELD, ACSW
Executive Director

SERVICIOS DE LA RAZA
4055 Tejon Street Denver, Colorado 80211
February 9, 1983

Dr. Donald J. Devine
Director
Office of Personnel Management
1900 E. Street Northwest
Washington, D.C. 20145

Dear Dr. Devine,

Servicios de La Raza, a mental health and social services agency located in Denver, Colorado, experienced a threefold increase in the demand for its basic emergency social services during the past year. Despite the increase we were unable to procure sufficient funds from our local Mile High United Way to increase services to needy clients due in large measure to a shortfall in Mile High's fund drive for 1982. This in turn was largely due to a decrease in contributions from the Combined Federal Campaign.

Some Federal employees boycotted or lessened their contributions through the Combined Federal Campaign because of the inclusion of controversial single purpose agencies as recipients of this fund. Even groups outside the federal system lessened their support to United Way despite the fact that United Way has no control over which organizations are admitted to the Combined Federal Campaign. The impact of this was felt locally by Servicios de La Raza.

At a time when local and national United Way Agencies, Corporations and Foundations are re-prioritizing their giving to concentrate resources on critical human needs, it is very discouraging to have the Combined Federal Campaign work against this effort. We therefore urge you and President Reagan to not admit into the Combined Federal Campaign controversial non-direct service groups which negatively affect the giving of federal and *non-federal* employees. Secondly, in keeping with increasing needs and national trends, we urge you to place more emphasis on supporting those programs that provide basic human services in the health and welfare field.

Sincerely,

/s/ _____
ERNEST J. MARTINEZ
Executive Director

COLORADO HEARING AND SPEECH CENTER
4280 Hale Parkway
Denver, Colorado 80220
February 1, 1983

Dr. Donald J. Devine, Director
Office of Personnel Management
1900 E. Street Northwest
Washington, D.C. 20145

Dr. Devine:

As President of the Board of Directors for the Colorado Hearing and Speech Center, I am deeply concerned that our ability to raise the needed funds to provide these services may be impaired by recent developments in the charitable campaign for federal employees. This concern is especially distressing at this time of high unemployment and ever increasing need for services. Here in Denver there were over $130,000 less dollars raised for United Way agencies through the C.F.C. that could have been allocated for our critical human care services.

The recent decision to admit single purpose advocacy groups to the Combined Federal Campaign, the only charitable fund drive allowed on federal property, has endangered what has been a successful fund raising effort for our organization in the past. The admission of these organizations was *highly controversial* and has caused confusion and disenchantment with the campaign.

This disenchantment has already seriously impaired the ability of local principal combined fundraising organizations to raise funds to support direct services. A continuation will cause irreparable erosion of our fund raising efforts in the future. If continued, local estimates range from at 10% to 50% reduction in funding from federal employees in 1983. Many hard-hit communities are already cutting back in their allocations which demand for the services by the needy is rising. Action must be taken to rectify this situation.

Therefore, we urge President Reagan to modify Executive Order 12353 by limiting eligibility in the Combined Federal Campaign to organizations that devote a substan-

tial portion of their expenditures to services in the health and welfare field. President Kennedy launched the Combined Federal Campaign in 1961 to encourage federal employees to pledge money in support of voluntary health and welfare charities. The campaign was designed to complement the direct effort of the government itself to meet *basic human needs.* For 20 years the campaign operated successfully under this premise. Returning to President Kennedy's original intent for the Combined Federal Campaign is the best course of action. This return will achieve two important results. It will (1) encourage support of programs that are critical to the national interest because they provide for basic human needs; and (2) make ineligible for participation in the Combined Federal Campaign controversial single purpose advocacy groups. The present eligibility of these groups is resulting not only in loss of support from federal employees but also from those working Americans who provide most of the support to our agencies.

Sincerely,

/s/ _____

JERRY NORTHERN, PH.D.
BOARD PRESIDENT

DEPARTMENT OF HEALTH & HUMAN SERVICES
Region IV
101 Marietta Tower
Atlanta GA 30323
February 2, 1983

Donald J. Devine, Ph.D.
Director
Office of Personnel Management
1900 E Street, N.W.
Washington, D.C. 20415

Dear Dr. Devine:

Last Fall, through my involvement on the Atlanta Federal Executive Board, I served on the admissions committee for the Metro Atlanta Combined Federal Campaign. During the process of reviewing requests for admission and conducting a public hearing, I was appalled that groups and organizations whose purpose was in direct conflict with basic American principles and policies could qualify as bona fide recipients, simply because they had a local address and a local or toll-free phone number.

While we encouraged our employees to designate the specific recipient(s) of their contributions, personally I resented the time and effort expended in raising funds for advocacy groups rather than service providers.

I strongly endorse the position that we prohibit advocacy groups from applying for funds raised by the Combined Federal Campaign. Rather, I would like to see the criteria revised that would restrict eligible applicants to direct providers of health and social services.

I am pleased to see your interest in reforming the major charitable fund-raising effort of the Federal Government. My best wishes and support in carrying out further reforms in the system.

Sincerely yours,

/s/ _____

GEORGE H. RUDY
Regional Director

Little Rock, Arkansas
February 8, 1983

Dr. Donald Devine, Director
U.S. Office of Personnel Management
1900 E Street, N.W.
Washington, DC 20415

Dear Dr. Devine:

The 1982 Combined Federal Campaign in Pulaski County, Arkansas, raised $319,423—a 9.14 percent increase over the previous year. If viewed in terms of dollars raised, this was a very successful campaign. However, if viewed in terms of organization, execution, and future potential, the campaign cannot be defined as either successful or promising.

Major problems were encountered on the local level during this past year's campaign. As Chairman of the 1982 Pulaski County Combined Federal Campaign, I view these problems as stemming from an insensitivity at the national level to local level needs and philosophy. In defense of this statement, and in the hope that future campaigns will not suffer from these same problems, the following comments and suggestions are offered.

(1) Inability of the national organization to make and stick with campaign schedules created delays at the local level which were costly and detrimental to the campaign. More than 90 percent of the gross dollar increase this year came from Little Rock Air Force Base personnel. This increase is attributed to increased military pay in the opinion of the keyworkers at the base. The campaign at the base, however, was seriously jeopardized by repeated delays of three weeks in getting the go ahead to print the campaign materials. As a result, in order to meet the deadline dictated by internal operation requirements, the campaign materials were printed in a rush and a premium price was paid to ensure timely delivery.

After given the go ahead to print and disseminate the campaign materials, even greater frustration resulted from the continued receipt from OPM of notifications of agency

admissions by appeal. These overulings of local decisions on agency admissions did not result in participation by these agencies since the campaign materials had been distributed and the solicitation was well underway.

DEPARTMENT OF THE ARMY
US Army Communications Command St Louis
4300 Goodfellow Boulevard, St, Louis, Missouri 63120
February 9, 1983

Dr. Donald J. Devine, Director
Office of Personnel Management
Washington, DC 20415

Dear Mr. Devine:

1. During the last Combined Federal Campaign, in the St. Louis area a great reluctance by individuals to participate was evident.

2. This reluctance is the direct result of incorporating advocacy and politically oriented groups. It is felt that health and welfare agencies should be the recipients. An informal personal survey, while not statistically valid, supports this position.

3. A further complication is a belief that whether or not a person designates a special activity to receive all or part of a contribution is futile because the ratio for each group has been predetermined before a campaign is kicked off.

4. I personally will no longer contribute to CFC if advocacy groups remain as recipients.

/s/ _____
STEVE E. NELSON
Deputy

Combined Federal Campaign, 915 Olive Street, Box 14507,
ATTN: Clarence P. Squellati, St. Louis, MO 63178

COMBINED FEDERAL CAMPAIGN
OF
CERRO GORDO COUNTY, IOWA
P.O. Box 1465
MASON CITY, IOWA 50401
November 30, 1982

Mr. Kent Bailey
Office of Personnel Management
Room 5532
1900 "E" N.W.
Washington, DC 20415

Dear Kent:

Enclosed is the note we discussed over the phone. This comment is only one of several like it which we have heard for several weeks. It is hard to determine how much we lost locally in contributions because of this group's admittance, even though no local monies went to them.

However, we as a committee were concerned about several groups admitted at the national level. Some of them seem to be strictly "cause" groups and have little or no connection with charitable acts or services to the needy. Fortunately for our campaign, a number of them did not qualify for local participation.

I suppose a lot of us in this area feel the original purpose of the United Way and CFC has somehow gone by the wayside.

The contributors here have shown their reactions to these things, plus the general economic picture, by giving about 25 percent less than last year. A few more years like this one and we may not be able to muster a CFC campaign here.

I just hope that someone back there will start listening to the signals being sent from different parts of the nation.

Thanks for your help in the past, Kent, it has been invaluable.

Sincerely yours,

/s/ _____
DICK WILSON
Chairman, CFC
Mason City, Iowa

ENCLOSURE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-0928

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., ET AL., PLAINTIFFS,

v.

HONORABLE DONALD J. DEVINE, DIRECTOR, UNITED STATES OFFICE OF PERSONNEL MANAGEMENT, DEFENDANT.

AFFIDAVIT

I, William L. Robinson, depose and say as follows:

1. I am Executive Director and Chief Executive Officer of the Lawyers' Committee for Civil Rights Under Law. As such, I have responsibility for overseeing the day to day activities of the organization. These activities include responsibility for conducting the Committee's fundraising efforts which includes application to the Combined Federal Campaign.

2. The Lawyers' Committee for Civil Rights Under Law filed its application for inclusion in the 1983 Combined Federal Campaign on May 9, 1983.

Further deponent sayeth not.

/s/ William L. Robinson
WILLIAM L. ROBINSON

Sworn and subscribed before me this 25 day of May, 1983.

/s/ Valerie Prather
VALERIE PRATHER
Notary Public

My Commission expires on: March 31, 1984

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-0928

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., ET AL., PLAINTIFFS

v.

DONALD J. DEVINE, DIRECTOR, UNITED STATES OFFICE OF PERSONNEL MANAGEMENT, DEFENDANT.

AFFIDAVIT OF SHARON MILES

SHARON MILES, affirms and says:

1. I am presently employed by the Sierra Club Legal Defense Fund, Inc. as the Office Manager of its Washington, D.C. office.

2. On May 20, 1983, I filed an Application of Sierra Club Legal Defense Fund for Participation in the Fall 1983 Combined Federal Campaign with the U.S. Office of Personnel Management. The application was filed by hand, and a copy of a statement acknowledging receipt of that application is attached to this affidavit.

/s/ Sharon Miles
SHARON MILES

Affirmed before me this 25 day of May, 1983.

/s/ Kurt Berlin
KURT BERLIN
Notary Public

My commission expires January 31, 1984

This acknowledges receipt of an application from the Sierra Club Legal Defense Fund for participation in the fall 1983 Combined Federal Campaign.

/s/ D. Emma
D. EMMA

May 20, 1983

AFFIDAVIT

IN THE MATTER OF APPLICATION TO THE COMBINED FEDERAL CAMPAIGN 1983–1984 BY THE NATIONAL RESOURCES DEFENSE COUNCIL, INC. (NRDC)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ANNE F. SWEAZEY, being duly sworn, deposes and says:

I am Anne F. Sweazey, and my title is Development Director for Natural Resources Defense Council. As such, I am responsible for NRDC's application for participation in the 1983-1984 Combined Federal Campaign.

On May 26, 1983, I prepared NRDC's application for participation in the 1983-1984 Combined Federal Campaign, a copy of which is attached.

This application was sent to our attorney to be hand delivered to the Office of Personnel Management by Friday, May 27, 1983. It has been so delivered.

/s/ Anne Sweazey
ANNE F. SWEAZEY
Development Director
Natural Resources Defense
Council, Inc.

Sworn to before me this 26th day of May, 1983.

/s/ Andrea Elder
ANDREA ELDER
Notary Public

NRDC APPLICATION FOR COMBINED FEDERAL CAMPAIGN 1983-1984

Since NRDC was accepted for the 1981-1982 and 1982-1983 campaigns, and since there has been no substantial or significant change in any of the relevant categories, we are not submitting information under Sections (f)(1), (2), (3), (4), and (8).

(5) The Natural Resources Defense Council, Inc. (NRDC), is a nonprofit membership organization dedicated to improving the quality of the human environment. Environmental pollution poses a severe threat to human health: whether the source is dangerous particulates in the air, toxic substances in drinking water, or careless disposal of hazardous wastes, the results are accelerated impairment of human health, manifested in such ways as aggravation of respiratory and cardiovascular diseases, neurological problems, and learning disabilities. Often the persons most seriously affected are those least able to defend themselves: children, the elderly, and the poor.

NRDC seeks to combat environmental pollution and the ravages it causes through a broad program of scientific research, public education, and participation in the development of public policy on environmental and natural resource matters. Among the areas in which NRDC is currently active are air and water pollution, toxic substances control, energy policy, urban transportation, coastal zone and public lands management, and environmental impact assessment.

NRDC is making this application under the following subparagraphs of Section 950.101 (a) (3):

(v) ***Health research***

NRDC's scientists and resource specialists study the causes and health effects of the several different sources of environmental pollution. NRDC is currently studying the levels, types, and toxicity of pesticide residues on produce in California. We commissioned and distributed a study on acid rain and hazardous air pollutants which concluded that

11-21% of current lung cancer deaths could have been prevented by better hazardous pollutant controls.

(vii) ***Delivery of legal services to the poor and indigent, and defense of human and civil rights secured by law***

One of NRDC's goals is the defense through the legal system of the legally established constitutional and statutory right of every citizen to a safe and healthy environment. NRDC's legal actions have measurably improved the health and welfare of the citizens of the United States. For example, the landmark *NRDC* v. *Train* Consent Decree of 1976 compelled the Environmental Protection Agency (EPA) to establish the first comprehensive program regulating toxic pollutant discharges into the nation's waterways; and in 1979, we won settlement of the largest air pollution case in history, forcing the Tennessee Valley Authority to cut its emissions of sulphur oxides by a million tons per year, or 8% of the national total. The scientific research into the health effects of toxic substances provided by NRDC's scientific staff supplements the organization's defense of human and civil rights secured by environmental law. NRDC's legal actions also serve those who are disproportionately harmed by pollution, namely the poor, the elderly, and children.

(xiii) ***Information and counselling with respect to the obtaining of health and legal services***

NRDC is committed to increasing public awareness of the dangers of pollution, opportunities for public participation in decisionmaking processes affecting environmental quality, and options available for dealing with the various forms of pollution. Through our "Toxics Waterwatch" program, we trained hundreds of citizens in the South, the Midwest, and the Northwest how to monitor industrial permits controlling toxic discharges into the nation's waterways. NRDC has published handbooks and manuals on toxics regulations and permit procedures, coastal zone management, synthetic fuels development and other technical environmental subjects, distributing them to local community groups all over the country and using them to supplement our work with these groups. NRDC is currently

producing a comprehensive booklet describing the far-reaching effects of acid rain and various options for its control. We are also publishing a citizens' manual on groundwater pollution which encourages participation in decisions affecting drinking water.

(xiv) ***Lessening the burdens of government with respect to the provisions of the foregoing services***

The Clean Water Act of 1970 provides for active citizen participation in EPA's wastewater discharge permit program. EPA passed on to NRDC responsibility for educating the public in this often complicated process and making citizens aware that their participation was expected as an integral part of the plan. NRDC established temporary regional headquarters in Atlanta and Chicago and conducted workshops to educate citizens in their role in the permitting process. Currently, NRDC is conducting a pilot energy conservation project in the Pacific Northwest in cooperation with the governments of several states, which will then use the findings of the study to establish priorities and develop new energy policies.

Section 950.101(a)(2)

NRDC is not an "action" organization within the meaning of 26 CFR 1.501(c)(3)-1(c)(3) and is eligible to receive tax deductible contributions under 26 U.S.C. 170.

Section 950.403

(a) NRDC is a nonprofit, tax-exempt, charitable organization, supported by voluntary contributions from the general public and providing direct and substantial health and welfare and other appropriate national voluntary services through its national organization. All of NRDC's services are consistent with the policies of the United States Government.

(b) NRDC has a high degree of integrity and responsibility in the conduct of its affairs. We received an award from the U.S. Attorney General in 1979 "in recognition and appreciation for meritorious services which have materially contributed to the attainment of the highest standards of law enforcement and justice in the United States."

Funds contributed to NRDC by Federal personnel are effectively used for the announced purposes of NRDC.

(c)(1) NRDC is organized on a national scale with a national Board of Directors that represents its constituent parts; Board members are from the Northeast, the Midwest, the South, and the West, and include representatives of labor, law, journalism, science, business, and education. The Board exercises close supervision over the operations and fund-raising activities of the entire organization.

(c)(2) NRDC has earned good will and acceptability throughout the United States; its members are from all 50 states, and last year we were accepted by more than 100 local CFC campaigns. Some examples of cities where NRDC has a large constituency and where there are large numbers of Federal personnel are New York, NY; Boston, MA; Washington, DC; and Tucson, AZ.

(c)(3)(;) NRDC's activities affect citizens in every state by improving the quality of the air they breathe, the water they drink, the food they eat, and the land they use. Our Toxics Waterwatch Project alone involved participants from 17 states in three separate geographical regions. NRDC is currently promoting environmental quality and public health through several projects in different states, among them: studies of pesticide hazards in California; energy conservation in the Pacific Northwest; urban transportation in New York; protection of Alaskan coastal resources, from which several communities of native Alaskans derive their means of existence; acid rain control in the Midwest; and many others.

(ii) NRDC has contributing members in every state.

(iii) NRDC has 46,000 contributing members, including members in every one of the 50 states.

(iv) In addition to its many and varied local programs, several of NRDC's campaigns are national in scope. Our Campaign to Save the EPA, which was undertaken to ensure that the EPA maintains its ability to protect the nation's air and water, drew its support from around the entire nation. Our Coastal Project works to protect the coastal resources of Alaska as well as of the Western and Eastern seaboards. Our Clean Air and Clean Water Proj-

ects are national programs which draw their support from members in every state. For examples of public campaigns which substantially affect local areas, see Section 950.405(a)(6).

(d) NRDC is seeking support for current operations only.

Section 950.405

(a)(1) NRDC is a voluntary agency promoting public health through improvement and enhancement of environmental quality (See Section 950.101).

(a)(2) NRDC is voluntary and broadly supported by the public, meaning:

(i) that it is organized as a not-for-profit corporation under the laws of New York State;

(ii) that it is classified as tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended; and

(iii) that it has received more than 50% of its revenues from sources other than the Federal Government.

(a)(3) NRDC is directed by an active Board of Directors, all of whom serve without compensation. NRDC adopts and employs the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations;* prepares and makes available to the general public an annual financial report prepared in accordance with the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations* and is certified by an independent certified public accountant (See Appendix B); and provides for an annual external audit by an independent certified public accountant.

(a)(4) NRDC's fund-raising and administrative expense is not in excess of 25% of total support and revenue.

(a)(5) NRDC ensures that its publicity and promotional activities are based upon its actual program and operations, are truthful and nondeceptive, and include all material facts.

(a)(6) In addition to its nationwide programs, NRDC substantially benefits a large number of Federal employees at the local level all over the country. For example:

Urban Problems

—NRDC has played a major role in reducing levels of dangerous air pollutants in New York City's air. We were directly responsible for the establishment of regulations substantially reducing the amounts of lead in gasoline, which led to a sharp decrease in the incidence of lead-poisoning in city children. NRDC continues to work closely with the Mayor's office and a Transportation Coalition of business and civic groups to plan for safer, clean subways; efficient traffic patterns in automobile and bus lanes; and energy conservation measures.

Pesticide Contamination

—NRDC is conducting the nation's first independent study to examine the potential contamination of the food supply by pesticides. Increasing quantities of pesticide residues have been detected on food in California in recent years, and concern over the effects of these toxic residues has grown as well. NRDC will undertake a "market basket survey" of fruits and vegetables consumed in the five San Francisco Bay Area counties. The data will be analyzed by NRDC's scientific staff to assess the level of contamination and the associated health risks. NRDC will also evaluate California's current pesticide regulations, which we believe are inadequate to protect the public. The results of the study will be widely distributed to increase public awareness of the risks associated with involuntary pesticide consumption and to be used as a basis for recommending stricter controls on pesticide use.

Energy

—NRDC worked with Pacific Gas and Electric, California's largest utility, to establish a zero-interest loan program for all home weatherization;

—NRDC worked with the Bonneville Power Administration, the Pacific Northwest's largest utility, to make increased financial incentives to all potential investors in conservation and renewable energy programs.

—NRDC is working to initiate joint California/ Northwest proceedings on improving energy efficiency in appliances and buildings.

Air

—NRDC organized a joint United States/Canada workshop on acid rain in Toronto, and subsequently organized the Acid Rain Task Force to provide information on acid rain.

—NRDC is examining a number of emerging technologies for controlling sulfur dioxide emissions, the leading cause of acid rain. NRDC will use this information to develop proposals which would reduce acid rain and decrease the costs of acid rain control while protecting the jobs of miners who extract high-sulfur coal.

Coastal Resources

—NRDC produced a handbook on mitigating the effects of losses due to coastal storms and used it in working with communities along the East and Gulf Coasts. The handbook gave examples of positive action to avoid coastal hazards and to reduce floodplain losses by working with state and local officials.

—NRDC played an important role in the passage of the Pinelands Plan, a program to protect the fragile Pine Barrens in New Jersey. Citizens, industry, business and interested parties all had opportunities to participate in this plan.

—NRDC recently succeeded in obtaining an injunction against offshore oil and gas leasing in an ecologically sensitive area of the Outer Continental Shelf along the Alaska coast. NRDC believes that the fragile coastal area could not withstand the impacts of oil and gas leasing, exploration and development. The area in question is one of the most biologically productive in the world, and disruption of this habitat would have jeopardized the livelihood of several communities of native Alaskans who depend on the area's productivity for their subsistence.

NRDC ensures that its services are accessible to Federal employees in the local areas. It does this by issuing press releases to local newspapers, by consulting with other environmental organizations, and by putting notices about NRDC's services in publications of those organizations. NRDC is in the process of establishing a toll-free telephone number so that Federal employees and others all over the country can learn at no charge how they can benefit from NRDC's work.

(b) *Fund-Raising Practice.* NRDC's publicity and promotional activities assure protection against unauthorized use of its contributors lists; permit no payment of commissions, kickbacks, finders fees, percentages, bonuses, or overrides for fundraising; and permit no general telephone solicitation of the public.

(c) *Reports*

(1) *Annual Report*

NRDC prepares an annual report to the general public that includes a full description of its activities and accomplishments and the names of chief administrative personnel (Enclosed).

(2) *Combined Reports*

NRDC is not organized on an affiliate basis and therefore prepares only one financial report.

(3) *Source of Funds and Costs Report*

(Enclosed)

(6) NRDC is governed by a Board of Directors who play an active role in the management of NRDC. Board members attend six Board meetings per year and serve on Finance, Development, Nominating and Executive Committees. The Board of Directors manages, directs and controls the activities, affairs, and funds of NRDC. Specific responsibilities include development of significant internal policies, approval of organizational budget and legal actions, and investment and management of assets. Following is a list of current Board members:

Dr. Dean E. Abrahamson Humphrey Institute 967 Social Science Building University of Minnesota Minneapolis, MN 55455	Professor, Humphrey Institute of Public Affairs
Mrs. Adele Auchincloss 1111 Park Avenue New York, NY 10028	Industrial designer; Conservationist
Richard I. Beattie, Esq. Simpson Thacher & Bartlett One Battery Park Plaza New York, NY 10004	Partner, Simpson Thacher & Bartlett
Boris I. Bittker, Esq. Yale Law School Yale Station, Box 401A New Haven, CT 06520	Sterling Professor of Law, Yale University
Robert O. Blake 2211 King Place, N.W. Washington, DC 20007	Senior Fellow, International Institute for Environment and Development
William T. Coleman, Jr., Esq. O'Melveny & Myers 1800 "M" Street Washington, DC 20036	Partner, O'Melveny & Myers
Joan K. Davidson 32 East 64th Street New York, NY 10021	President, The J.M. Kaplan Fund, Inc.
Adrian W. DeWind, Esq. Paul, Weiss, Rifkind, Wharton & Garrison 345 Park Avenue New York, NY 10154	Partner, Paul, Weiss, Rifkind, Wharton & Garrison

Stephen P. Duggan, Esq. Simpson Thacher & Bartlett One Battery Park Plaza New York, NY 10004	Trustee, Institute of International Education
James B. Frankel, Esq. Cooper, White & Cooper 101 California Street, 16th Fl. San Francisco, CA 94123	Attorney; Conservationist
Robert W. Gilmore Global Perspectives in Education, Inc. 218 East 18th Street New York, NY 10003	President, Joyce Mertz-Gilmore Foundation
Francis W. Hatch, Jr. Nine Park Street Boston, MA 02108	Director, Fiduciary Trust Co. and Conservation Law Foundation
Thomas C. Jorling, Esq. Center for Environmental Studies Box 632 Williams College Williamstown, MA 01267	Professor of Environmental Studies, Williams College
Hamilton F. Kean, Esq. 120 East 56th Street, Room 1510 New York, NY 10022	President, Youth Counseling League
Jonathan Z. Larsen 14 East 63rd Street New York, NY 10021	Journalist
Dr. Joshua Lederberg The Rockefeller University 66th Street and York Avenue New York, NY 10021	President, The Rockefeller University
Weyman I. Lundquist, Esq. Heller, Ehrman, White & McAuliffe 44 Montgomery Street San Francisco, CA 94104	Partner, Heller, Ehrman, White & McAuliffe
James Marshall, Esq. Burns, Summit, Rovins & Feldesman 445 Park Avenue New York, NY 10022	Governing Council, The Wilderness Society; Director, The Adirondack Council

Michael McIntosh The McIntosh Foundation 45 Rockefeller Plaza Suite 1965 New York, NY 10020	President, The McIntosh Foundation
Mrs. Carol Noyes Laurel Hollow 1266 Moore's Hill Road Syosset, NY 11791	Member of the Board, Planned Parenthood of NYC and Global Tomorrow Coalition
John B. Oakes The New York Times 229 West 43rd Street New York, NY 10036	Former Senior Editor, *The New York Times*
Franklin E. Parker, Esq. Patterson, Belknap, Webb & Tyler 30 Rockefeller Plaza New York, NY 10112	Partner, Patterson, Belknap, Webb & Tyler
Dr. Gifford B. Pinchot Old Quarry Guilford, CT 06437	Biochemist-Physician; Marine biologist
Robert Redford Wildwood Enterprises 75 Rockefeller Plaza New York, NY 10019	Actor; Conservationist
Nathaniel P. Reed Jupiter Island Box 375 Hobe Sound, FL 33455	Businessman; Conservationist
John R. Robinson, Esq. 150 Purchase Street Rye, NY 10580	Attorney
Laurence Rockefeller, Esq. Natural Resources Defense Council, Inc. 122 East 42nd Street New York, NY 10168	Conservationist
Leonard R. Sargent Colwin Springs, MT 59021	Rancher; Conservationist
Joan C. Schwartz 945 Fifth Avenue New York, NY 10021	Editorial Associate, *Partisan Review*

John Sheehan United Steelworkers of America AFL-CIO Building, Suite 706 815 16th Street, N.W. Washington, DC 20006	Legislative Director, United Steelworkers of America
David Sive, Esq. Winer, Neuburger & Sive 425 Park Avenue New York, NY 10022	Partner, Winer, Neuburger & Sive
Thomas B. Stoel, Esq. Stoel, Rives, Boley, Fraser & Wyse 900 S.W. Fifth Avenue, 23rd Fl. Portland, OR 97204	Partner, Stoel, Rives, Boley Fraser & Wyse
Thomas A. Troyer, Esq. Caplin & Drysdale 1101 17th Street, N.W. Washington, DC 20036	Co-Chairman, National Friends of Jackson Hole
Dr.George M. Woodwell Ecosystems Center Marine Biological Laboratories Woods Hole, MA 02543	Director, Ecosystems Center, Marine Biological Laboratories, Woods Hole

COOPERS & LYBRAND

May 26, 1983

Natural Resources Defense
Council, Inc.
122 East 42nd Street
New York, NY 10007

Dear Sirs:

We have examined the financial statements of Natural Resources Defense Council, Inc. for the years ended December 31, 1980 and December 31, 1981 and have reported thereon under dates of May 22, 1981 and May 5, 1982, respectively. Our examinations were made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

Based upon the procedures referred to in the preceding paragraph, we believe that: (a) the financial statements referred to above were prepared in accordance with the "Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations," published by the National Health Council and the National Assembly for Social Policy and Development, Inc.; and (b) the accounts of the organization are maintained in accordance with the principles of "fund accounting" and accounting procedures in effect have been designed to insure observance of limitations and restrictions placed on the use of resources available. Accordingly, resources for various purposes are classified into funds that are in accordance with activities or objectives specified. Such activities are conducted in accordance with a detailed budget approved at the beginning of the year by the governing board. Significant variations from the approved budget require prior authorization by the board.

This letter has been furnished to you in connection with your application to the Combined Federal Campaign. It should not be used for any other purpose without our prior

consent. It should be recognized, however, that this limitation as to dissemination of the letter does not, in any way, indicate reservations on our part regarding the contents of the letter.

Very truly yours,

COOPERS & LYBRAND

APPENDIX A TO SUBPART D
SOURCE OF FUNDS AND COSTS REPORT
(for the year ending 1982)

Organization: NATURAL RESOURCES DEFENSE COUNCIL

Public Support	
Received Directly:	$
Contributions	$3,175,503
Special Events (net of direct benefit costs of *$20,000*	33,000
Legacies and bequests	17,500
Subtotal	
Received Indirectly:	
Federated Campaigns (e.g., United Way)	
Federal Service Campaigns	
Other Contributions-Combined Federal Campaign	42,278
Subtotal	
Total Support from the Public	$3,268,281
Revenue:	
Grants from Federal Government agencies (including grants in-kind)	36,111
Grants from state or local government agencies (including Medicaid)	
Memberships	1,027,360
Program Service fees (including Medicare)	95,188
Sales of materials and services to member unit (net of direct expenses)	
Sales of materials and services to the public (net of direct expenses)	39,250
Transfers, dues, etc. from affiliated organizations, etc.	
Investment Income	152,700
Gains on invesmtent transactions	17,300
Other Income	
Total revenue	1,367,909
Total Public support and revenue	$4,636,190
Expenses	
Program services	
Environmental	2,668,154
Science	388,096
Public Education	679,167
Subtotal	3,735,417
Supporting Services	
Management and general	388,095
Fund raising	727,678
Subtotal	1,115,773
Total expenses	4,851,190
Excess (deficiency of public support and revenue over expenses	215,000



Natural Resources Defense Council, Inc.

Annual Report
1981 - 82

523

BEST AVAILABLE COPY

(10) and (11)

A copy of NRDC's 1981 financial report/external audit by an independent certified public accountant is enclosed. Coopers & Lybrand has just completed their audit of NRDC for 1982, and we expect to receive a draft of their report in June. We will send you a copy as soon as it becomes available.

NATURAL RESOURCES DEFENSE COUNCIL, INC.

Financial Statements
for the year ended
December 31, 1983

Coopers & Lybrand
Certified Public Accountants

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-0928

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., ET AL., PLAINTIFFS,

v.

DONALD J. DEVINE, DIRECTOR, UNITED STATES OFFICE OF PERSONNEL MANAGEMENT, DEFENDANT.

ANSWER

Defendant, by and through his undersigned attorneys, hereby answers plaintiffs' Complaint as follows:

First Defense

The Court lacks jurisdiction over the subject matter of this action.

Second Defense

Plaintiffs have no standing to raise the claims asserted in the Complaint.

Third Defense

Plaintiffs have failed to exhaust available administrative remedies as to some or all portions of their claims.

Fourth Defense

Plaintiffs' action is premature and therefore is not ripe for judicial resolution.

Fifth Defense

The Complaint fails to state a claim upon which relief can be granted.

Sixth Defense

In response to the numbered paragraphs of the Complaint, and adopting the enumeration used therein, defendant avers as follows:

1. This paragraph contains plaintiffs' characterization of their action, to which no response is required;

2-3. These paragraphs contain conclusions of law to which no response is required; to the extent that a response may be deemed required, denied.

4. Admit that plaintiffs are not-for-profit corporations organized in the manner set forth in this paragraph, and that plaintiffs are approved by the United States Internal Revenue Service as charitable, tax-exempt organizations under section 501(c)(3) of the Internal Revenue Code. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the description and characterization of the purpose and activities of plaintiffs, and accordingly those allegations are denied; defendant is also without knowledge or information sufficient to form a belief as to the truth of the allegations that each plaintiff is authorized to sue and be sued under its corporate name, and accordingly those allegations are also denied.

5-7. Defendant admits and confirms the authenticity of Executive Orders Nos. 10927, 12353 and 12404, and the CFC regulations at 5 CFR at Part 950, to which the Court is respectfully referred for a true and accurate statement of the contents thereof.

8. Deny last sentence. Admit that, in the CFC, funds donated by individual federal employees are either "designated" or "deemed designated," and that individuals may designate any organization approved for inclusion in the CFC to receive a specified contribution, either by payroll withholding or by one-time, lump-sum gift. Admit that if an employee chooses the payroll withholding method of contribution, the specified amount of money is automatically deducted from the individual's paycheck and transmitted to the designated agency, and admit that if an individual does not designate a particular agency to receive his or her

funds, the funds are deemed designated to the Principal Combined Fund Organization. Admit that only agencies whose applications are accepted for inclusion into the CFC can receive funds through the CFC, and that except as set forth in 5 CFR § 950.311, an agency that has been denied inclusion in the CFC cannot solicit federal personnel at their places of work or assignment.

9. Admit first sentence. With respect to the remaining allegations of this paragraph, see the response to paragraph 4 of the Complaint *supra*.

10. The last sentence of this paragraph contains conclusions of law to which no response is required; to the extent that a response may be deemed required, deny. With respect to the remaining allegations of this paragraph, see the response to paragraph 4 of the Complaint *supra*.

11. With respect to the allegations contained in this paragraph, see the response to paragraph 4 of the Complaint *supra*.

12. Admit first and second sentences. With respect to the allegations contained in the third sentence of this paragraph, the Court is respectfully referred to the referenced decision. With respect to the allegations contained in the fourth sentence of this paragraph, admit that in 1981 some of the plaintiffs were admitted into the CFC.

13. Admit first sentence. With respect to the allegations contained in the second sentence of this paragraph, the Court is respectfully referred to the referenced regulations for a complete and accurate statement of the contents thereof. With respect to the allegations contained in the third sentence of this paragraph, admit that several of the plaintiffs were admitted into the CFC in 1982, but not solely as a result of the new implementing regulations.

14. Admit that Executive Order 12404 was issued on February 10, 1983 as a result of concerns regarding the CFC, including concerns about the inclusion of certain types of organizations in the CFC. With respect to the allegations concerning the purpose of Executive Order 12404, the Court is respectfully referred to that Executive Order for a complete and accurate statement of the contents thereof.

15. Deny first, third and fourth sentences. With respect to the allegations contained in the second sentence of this paragraph, admit that decisions on applications for the 1983 CFC are unlikely to be issued before July 1983.

16-17. Deny.

18. Deny that plaintiffs are entitled to the relief requested or to any relief whatsoever.

Any allegation of the Complaint not hereinbefore specifically admitted or denied is hereby denied.

WHEREFORE, defendant, having fully answered, prays that the Complaint be dismissed with prejudice and that the Court order such other and further relief as it may deem appropriate, including defendant's costs and attorneys' fees in this action.

Respectfully submitted,

/s/ Stanley S. Harris
STANLEY S. HARRIS
United States Attorney

/s/ Royce C. Lamberth
ROYCE C. LAMBERTH
Assistant United States Attorney

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-0928

THE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., ET AL., PLAINTIFFS

v.

DONALD J. DEVINE, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT, DEFENDANT.

SUPPLEMENTAL AFFIDAVIT OF EMANUAL A. OWENS

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

EMANUEL A. OWENS, being duly sworn, deposes and says:

1. Attached to Exhibit T is a true and accurate copy of a letter and enclosures received by myself in my capacity as CFC co-ordinator of the NAACP Legal Defense and Educational Fund, Inc. from the Peninsula (Virginia) CFC.

2. The letter states that the NAACP/LDF has been rejected for participation in the local 1983 CFC because of Executive Order 12404.

3. The NAACP/LDF is filing an appeal to the Office of Personnel Management from the denial pursuant to the regulations that are presently in effect.

/s/ Emanuel A. Owens
EMANUEL A. OWENS

Subscribed and sworn to before me this 24th day of June, 1983.

/s/ Gloria A. Jones
GLORIA A. JONES
Notary Public

PENINSULA COMBINED FEDERAL CAMPAIGN

June 15, 1983

NAACP Legal Defense and Educational Fund, Inc.
ATTN: Mr. Emanuel A. Owens, Jr.
Coordinator CFC
10 Columbus Circle
New York, NY 10019

Dear Mr. Owens:

In carefully reviewing your organization's application for inclusion in our local 1983-84 Combined Federal Campaign, special consideration was given your application by our local CFC Coordinating Committee. In light of the new Executive order, which states limited eligibility for participation, your organization does not meet the eligibility criteria and, therefore, your application is disapproved.

I have enclosed a copy of the Executive order and a newsletter that gives you the full details of this year's eligibility for participation.

Sincerely,

/s/ Byron E. Gibson
BYRON E. GIBSON
Chairman
Peninsula Combined Federal Campaign

2 Enclosures
As stated

APPENDIX A

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

June 27, 1983

MEMORANDUM FOR 1982 CFC PARTICIPANTS, APPLICANTS FOR THE FALL 1983 CFC, AND ORGANIZATIONS THAT HAVE INQUIRED ABOUT CFC PARTICIPATION

SUBJECT: Proposed Changes to Combined Federal Campaign Regulations

Attached are proposed changes to the regulations governing the Combined Federal Campaign, which are necessary to implement Executive Order No. 12404. I encourage your comments and suggestions.

We expect to issue the final regulatory changes as soon as possible following the close of the 30-day public comment period. When we do, we will send you the final regulations and notify you of the deadline by which applications are due in our office.

Because of the short time-frame for organizing the 1983 Campaign, we urge those organizations that plan to apply to submit both their national (three complete copies) and local applications under the guidelines set forth in the proposed regulations and to submit those applications as soon as possible. (Attached is the list of local Federal Coordinating Committees.) Those organizations that submit 1983 applications under the 1982 regulations should now update their applications. And all applications will have to be updated to conform to any changes that may appear in the final regulations.

For your information, here are the specific actions that must be taken before local campaigns can get under way. We anticipate that we will be able to adhere to this schedule.

Public comment period ends	July 25
Regulations issued in final form	August 1
Applications or application revisions due in OPM from national voluntary agencies (NVAs)	August 15
National Eligibility Committee meets	August 31
Director's decision on NVAs	August 31
Director's decision on appeals from NVAs	September 9

/s/ Donald J. Devine
DONALD J. DEVINE
Director

APPENDIX B

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

August 20, 1983

CFC MEMORANDUM NO. 82-11

MEMORANDUM FOR CHAIRMEN AND CHAIRWOMEN, FEDERAL COORDINATING COMMITTEES, NATIONAL VOLUNTARY AGENCIES, AND FEDERATED GROUPS

SUBJECT: Final Assignment of Voluntary Agencies to Federated Groups; Implications for Local Eligibility.

In light of guidance contained in FPM Letter 950-1, which was attached to CFC Memorandum No. 82-8, we have just completed a review of the assignments of voluntary agencies to federated groups that were made on July 23, 1982, as set forth in CFC Memorandum No. 82-4. As a result of that review, four changes in federation assignment have been made. The final list of assignments for the 1982 campaign is shown below, with an asterisk beside those agencies whose assignments have been changed.

Your special attention is drawn to two of these changes since there are implications for local eligibility decisions:

1) The United Seamen's Service provides a substantial preponderance of its services overseas and so is now listed as an International Service Agency. As such, it is not required to demonstrate a local presence. The United Seamen's Service is therefore eligible to participate in all local campaigns.

2) Because the Special Olympics agency does not provide a substantial preponderance of its services overseas, it has been assigned to the National Service Agencies. Normally, therefore, this agency would have to apply to each of the local Federal Coordinating Committees and demonstrate a local presence in order to be eligible to participate in local campaigns. Due to the lateness of this change of federation assignment, however, the local application and presence requirements are waived for this agency this year. Accordingly, Special Olympics is also eligible to participate in all local campaigns for the 1982 CFC.

RECOGNIZED NATIONAL VOLUNTARY AGENCIES

1. *Local United Ways, Funds, Community Chests and Other Federated Groups* which are members in good standing of, or are recognized by, the United Way of America.

2. *National Health Agencies* (Domestic and overseas areas).

AMC Cancer Research Center and Hospital
American Cancer Society
American Diabetes Association
American Hearing Research Foundation
American Heart Association
American Kidney Fund
American Lung Association
American Paralysis Association
*American Social Health Association
Amyotrophic Lateral Sclerosis Association of America
Arthritis Foundation
Association for Retarded Citizens of the U.S.
City of Hope
Cooley's Anemia Foundation
Cystic Fibrosis Foundation
Epilepsy Foundation of America
Juvenile Diabetes Foundation
Leukemia Society of America
Little City Foundation
March of Dimes Birth Defects Foundation
*Medic Alert Foundation International
Muscular Dystrophy Association
Myasthenia Gravis Foundation
National Association for Sickle Cell Disease
National Easter Seal Society
National Foundation for Ileitis and Colitis
National Hospice Organization
National Hemophilia Foundation
National Huntington's Disease Association

National Jewish Hospital and Research Center/National Asthma Center
National Kidney Foundation
National Mental Health Association
National Multiple Sclerosis Society
National Retinitis Pigmentosa Foundation
National Reye's Syndrome Foundation
National Society for Autistic Children
National Society to Prevent Blindness
National Spinal Cord Injury Foundation
Research to Prevent Blindness
St. Jude Children's Research Hospital
Tuberous Sclerosis Association of America
United Cerebral Palsy Associations

3. *International Service Agencies* (Domestic and overseas).

African Medical and Research Foundation
Africare
American Near East Refugee Aid
CARE
Church World Service
Direct Relief Foundation
Foster Parents Plan
Helen Keller International
International Eye Foundation
International Human Assistance Programs
International Rescue Committee
International Social Service, American Branch, Inc.
Meals for Millions/Freedom from Hunger Foundation
National Council for International Health
Oxfam-America
Pearl S. Buck Foundation
Project Concern International
Project HOPE (People-to-People Health Foundation)
Save the Children Federation
Technoserve
Unitarian Universalist Service Committee
*United Seamen's Service
United States Committee for UNICEF
World Education

World Wildlife Fund—U.S.

4. *International Service Agencies—Overseas Area*

All International Service Agencies, plus
Armed Services Department, YMCA
Boy Scouts of America, Overseas Councils
Girl Scouts of America, Overseas Affiliates
Goodwill Industries of America, International Division
National Recreation and Park Association
Opportunities Industrialization Centers International
Planned Parenthood—World Population
Special Olympics

5. *United Service Organizations* (USO) (Overseas area).

6. *National Service Agencies* (Domestic area).

American Foundation for the Blind
Capital Legal Foundation
CENIKOR Foundation
Center for Auto Safety
Center for Science in the Public Interest
Children's Defense Fund
Conservative Legal Defense and Education Fund
Federally Employed Women Legal and Education Fund
Indian Law Resource Center
Lawyers' Committee for Civil Rights Under Law
Martin Luther King, Jr. Center for Nonviolent Social Change
NAACP Legal Defense Fund Educational Fund
NAACP Special Contribution Fund
National Audubon Society
National Black Media Coalition
National Black United Fund
National Child Labor Committee
National Committee for Prevention of Child Abuse
National Congress of American Indians Fund
National Council of Negro Women
National Image
National Organization for Women Legal Defense and Education Fund
National Parks and Conservation Association

National Recreation and Park Association
National Right to Life Educational Foundation
National Right to Work Legal Defense Foundation
Native American Rights Fund
Natural Resources Defense Council
Pacific Legal Foundation
Planned Parenthood-World Population
Puerto Rican Legal Defense and Education Fund
Sierra Club Legal Defense Fund
*Special Olympics
United Negro College Fund
United Service Organizations
U.S. Olympic Organizations
U.S. Olympic Committee
Vietnam Veterans of America Foundation
Wilderness Society

RECOGNIZED FEDERATED AGENCIES

American Red Cross
International Service Agencies
International Service Agencies—Overseas Area
National Health Agencies
National Service Agencies
National Voluntary Organizations Campaign Committee
United Way of America

/s/ Donald J. Devine
DONALD J. DEVINE
Director

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 83-0928

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., ET AL., PLAINTIFFS,

v.

HONORABLE DONALD J. DEVINE, DIRECTOR, UNITED STATES OFFICE OF PERSONNEL MANAGEMENT, DEFENDANT.

SUPPLEMENTAL AFFIDAVIT

P. Kent Bailey, being duly sworn, deposes and says:

1. I am the program analyst providing staff support to the Assistant to the Deputy Director for Regional Operations, United States Office of Personnel Management (OPM). The Office of the Assistant to the Deputy Director is the office with primary responsibility for support to the Director of OPM in the administration of the Combined Federal Campaign (CFC). The statements made herein are based upon personal knowledge obtained in the course of performing the official duties assigned to me.

2. Initially, OPM estimated a 7 to 7.5 percent increase in fall 1982 CFC contributions compared to fall 1981 contributions. This was arrived at by using a projected $100 million for fall 1982 and $93 million for fall 1981. Since then, the International Service Agencies Group staff has determined that, based on a close and complete review of fall 1981 results, the actual fall 1981 amount is $95,404,942. The OPM projection of $100 million was revised to $99 million based on additional reports received. I understand that the United Way of America estimates $97.7 million for the fall 1982 CFC.

3. Based on these changes, the following table shows the summary information for the fall 1980, 1981, and 1982 Campaigns:

	Contributions	% Increase from Prior Year	% Designated	% Participation
Fall 1982	$99,000,000	3.8	62.7	63.2
Fall 1981	95,404,942	9.6	49.5	64.7
Fall 1980	87,051,770	5.1	45.9	59.4

/s/ P. Kent Bailey
P. KENT BAILEY

Sworn to and subscribed before me this 30th day of June, 1983, in the City of Washington, District of Columbia.

/s/ Helen B. Welch
HELEN B. WELCH
Notary Public

My Commission expires: 3-31-87

EXHIBIT B

FEDERAL BUILDING & POST OFFICE
100 EAST "B" STREET ROOM 100
CASPER, WYOMING 82601

December 21, 1982

Joseph A. Morris
Office of Personnel Management
Office of the General Counsel
Washington, DC 20415

Dear Mr. Morris;

The Combined Federal Campaign Committee has complied with the directive from OPM regarding reinstatement of agencies to the CFC.

Sincerely,

/s/ J. M. O'Meara
JAMES M. O'MEARA, Chairman
Combined Federal Campaign Committee

December 1, 1983

Mr. James M. O'Meara
Chairman
Combined Federal Campaign for
Natrona County
%Casper Federal Executive's Council
Federal Building and Post Office
100 East B Street, Room 1002
Casper, Wyoming 82601

Dear Mr. O'Meara:

We have received a copy of your letter dated October 29, 1982, which was sent to "All National Service Agencies." In your letter, you inform the addressees that, "The Combined Federal Campaign Committee of the Casper Federal Executive's Council has voted to exclude all agencies listed under the National Service Agencies umbrella group ... (because) a large number of these agencies are of a primarily controversial political nature, ... and such organizations are not in keeping with the intent and spirit of the Combined Federal Campaign."

Your letter evidences an utter disregard for the published criteria to be applied by Local Federal Coordinating Committees (LFCCs) in making local eligibility determinations on the applications of national voluntary agencies to participate locally in the Combined Federal Campaign (CFC). The only decision to be made by LFCC in this process is whether or not the national voluntary agency has a direct and substantial presence in the local campaign community. An organization which meets the published eligibility criteria cannot, under the First Amendment to the United States Constitution, be excluded from participation in the CFC simply because it is controversial.

As you undoubtedly are aware by now, the Director of the United States Office of Personnel Management has overruled several of the eligibility determinations which were made by your LFCC. The Director's decisions were made following a careful review and application of appropriate CFC guidelines. The decisions are final, as provided in

the CFC regulations at 5 CFR § 950.407(d), and we expect your LFCC to faithfully comply with the decisions.

"There are many features of the rules presently governing the CFC which merit review. I assure you that intensive examination of the campaign's ground rules is underway. Meanwhile, of course, public servants are obliged to enforce the law as it exists, rather than as they would wish it to exist. I'm sure that in the future, you will see fit to abide by this principle.

Sincerely yours,

/s/ Joseph A. Morris

JOSEPH A. MORRIS
General Counsel

OGC:SRICK:nm 11/15/82

CASPER FEDERAL EXECUTIVES COUNCIL
FEDERAL BUILDING & POST OFFICE
100 EAST "B" STREET ROOM 1002
CASPER, WYOMING 82601

October 29, 1982

To: All National Service Agencies

The Combined Federal Campaign Committee of the Casper Federal Executive's Council has voted to exclude all agencies listed under the National Service Agencies umbrella group. It is the determination of the Committee that a large number of these agencies are of a primarily controversial political nature, and that such organizations are not in keeping with the intent and spirit of the Combined Federal Campaign.

Based on the above, your agency will not be included in the 1983 Combined Federal Campaign for Natrona County.

/s/ James M. O'Meara
JAMES M. O'MEARA
Chairman, Combined Federal
Campaign for Natrona County

Supreme Court of the United States

No. 84-312

DONALD J. DEVINE, DIRECTOR,
OFFICE OF PERSONNEL MANAGEMENT, PETITIONER

v.

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND,
INC., ET AL.

ORDER ALLOWING CERTIORARI. Filed October 29, 1984.

The Petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

Justice Marshall took no part in the consideration or decision of this petition.